

**MARKUP OF H.R. 3985, H.R. 3987, H.R. 4081,  
H.R. 4203, AND H.R. 4206**

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**HEARING**  
BEFORE THE  
**COMMITTEE ON SMALL BUSINESS**  
**UNITED STATES**  
**HOUSE OF REPRESENTATIVES**  
**ONE HUNDRED TWELFTH CONGRESS**  
SECOND SESSION

HEARING HELD  
MARCH 22, 2012



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# CONTENTS

## OPENING STATEMENTS

Hon. Sam Graves .....	Page 1
Hon. Nydia Velázquez .....	2

## WITNESSES

None

## APPENDIX

Prepared Statements:

None

Questions for the Record:

None

Answers for the Record:

None

Additional Materials for the Record:

None



**MARKUP OF H.R. 3985, H.R. 3987, H.R. 4081,  
H.R. 4203, AND H.R. 4206**

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**WEDNESDAY, MARCH 22, 2012**

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON SMALL BUSINESS,  
*Washington, DC.*

The Committee met, pursuant to call, at 10:00 a.m., in Room 2360, Rayburn House Office Building. Hon. Sam Graves [chairman of the Committee] presiding.

Present: Representatives Graves, Bartlett, Chabot, King, Coffman, Mulvaney, Tipton, Landry, Herrera Beutler, West, Ellmers, Walsh, Barletta, Hanna, Schilling, Velázquez, Schrader, Critz, Clarke, Chu, Cicilline, Richmond, Hahn, Peters, Owens, Keating.

Chairman GRAVES. Good morning. I will call this Committee hearing to order.

The Committee is in the midst of an effort to enact comprehensive reform of government contracting to help small businesses. Our efforts began with 10 hearings on contracting topics. And this was followed by the introduction of 8 contracting bills supported by over 20 trade associations. Last week, the Committee marked up four of those bills, plus two additional bills introduced by the minority. This week, we are going to mark up the remaining four bills, plus a bill introduced by the Ranking Member. And I believe this is a testament to the importance of government contracting for small businesses, and I think it is a tribute to the bipartisan nature of this Committee.

While we are going to briefly discuss each of the bills individually before we mark it up, I want to emphasize how important these issues are to small businesses and taxpayers. The federal government regularly spends over half a trillion dollars on federal contracts each year, and has spent over \$100 billion so far this year. When small businesses compete for those contracts, something important happens: we get jobs created, innovation occurs, competition brings down prices. So, in short, when small businesses win, we all win.

Today we are examining some of the key issues for small businesses such as who is actually small. We are making sure that the programs intended to help small businesses deliver results and do not inadvertently harm the very businesses they are supposed to help. We are halting unjustified contract bundling, which will result in more competition; we are standardizing the assistance we provide to the subcategories of small businesses; and we are protecting the taxpayers against fraud.

All of these issues deserve support, and I look forward to working with all of you today to move these bills one step closer to becoming law.

And I now recognize Ranking Member Velázquez.

Ms. VELÁZQUEZ. Thank you, Mr. Chairman. Small businesses continue to be at the center of the economy, creating nearly two-thirds of net employment gains. Seizing on this job-creating power is essential to move the economy forward. As a result, it is important that we help lay the foundation for their success.

One way to do this is to provide entry for small enterprises into the federal procurement marketplace. As a \$500 billion market for goods and services, the government buys everything from paper to furniture, to aircraft carriers. At every point in this procurement process small firms should have an opportunity to compete for the government's business. Unfortunately, this vision is far from reality. The government continues to struggle to meet the 23 percent goal for small firms and has not even come close to achieving the 5 percent goal for women-owned businesses. Fraud in contracting programs continues to increase as contracts are still being channeled to ineligible companies. And finally, contract bundling and consolidations remain a key problem and small businesses lack the tools and resources to fight back.

Tackling these problems is the right thing to do and I am hopeful that the legislation we consider today will take steps in the right direction. In this regard, I want to thank the chairman for continuing to work with us in a bipartisan manner on these bills.

And I thank the chairman and I yield back the balance of my time.

Chairman GRAVES. All right. We will be marking up the five contracting bills. We are going to do it in the order that they were—that we noticed them out.

The first bill is H.R. 3985, the “Building Better Business Partnerships Act of 2012.” It was introduced by Mr. Schilling and Ms. Chu. I now yield to Mr. Schilling to speak on 3985.

Mr. SCHILLING. Thank you, Chairman, and thank you, Ranking Member Velázquez. I want to thank Representative Chu for her work on H.R. 3985 and the efforts of the Committee to reform the federal contracting process.

I have owned my small pizzeria for more than 15 years and understand firsthand how difficult and basically limiting some federal programs can be for small business owners to navigate and access through. Contracting with the federal government is really no different.

I have heard from numerous job creators in my district about how valuable winning and retaining federal contracts are to growing their business and how the end results affects men and women they employ. Most recently, we helped a gentleman navigate successfully through and gain a Navy contract, which was a great win for our area.

With unemployment over 9 percent in my home state of Illinois, every job counts. The bill we have introduced focuses on improving and streamlining 13 mentor-protégé programs, which pair new businesses looking to increase their government contracts with more experienced businesses.

The GAO report released last year revealed there are a number of issues that need to be addressed with the mentor-protégé program. First, the GAO report revealed duplication among programs, creating more unnecessary paperwork for businesses. Secondly, participants risk losing their small affiliation when working with other businesses. And thirdly, some programs lack accountability. And lastly, the majority of our small businesses do not qualify to participate.

H.R. 3985 addresses these issues by placing the SBA in charge of overseeing and setting standards for the 13 existing programs based on the concerns I have just listed. It also requires the SBA to collect data from the agencies regarding the number and types of participants, including the number of HUBZone, veteran-, and women-owned businesses. Data showing the ability of businesses to retain these contracts is also required and must be submitted to Congress.

Ultimately, our bill will improve mentor-protégé programs, making it easier for small firms to compete for and win contracts, enabling them to grow, create jobs, and get folks back to work.

I thank you for the opportunity and urge Members of the Committee to support H.R. 3985.

Chairman GRAVES. And I yield to Ranking Member Velázquez.

Ms. VELÁZQUEZ. Thank you, Mr. Chairman. Mentor-protégé programs have been successful across 13 federal agencies to enhance the ability of small firms to compete for federal government contracts by furnishing them with a system to improve their performance. To this point the GAO reported at a Small Business Committee hearing last year that all—13 agencies have established policies and procedures for administering and monitoring their programs. GAO found that agencies have requirements in place to conduct periodic reviews as well as controls to help ensure that mentors and protégés meet eligibility criteria and benefit from participation in the program.

As a result of GAO's findings, it seems to me unnecessary and potentially problematic that the legislation will require the SBA to approve all mentor-protégé programs government-wide. Given SBA's track record of delay and inaction, the agency could effectively shut down these initiatives across the government by merely delaying an approval or disapproval decision.

And I want to be on record on this. I do not want to see that these programs are shut down and then members will call me or you, Mr. Chairman, to question why is it that we allow for this program to expire. While the true benefits of this program are uncertain, it is not advisable in this stage of the recovery to discontinue any source of small business support simply because the SBA is unable to act timely to approve otherwise well-functioning mentor-protégé programs as it was substantiated by the GAO report. In fact, the GAO analysis suggests that the programs are operating well without any additional bureaucratic layer of oversight. Plus, given SBA's poor track record of oversight of the HUBZone program, it gives me little comfort that we are handing the agency a similar responsibility.

With these concerns in mind, I hope that the legislation will continue to be improved as it heads to the floor. Mentor-protégé pro-

grams remain an important resource for many small businesses, enabling them to learn the ropes from more experienced contractors. Improving them is important, but we must make sure that future changes do not undermine the very strength of those mentor-protégé programs in existence today.

And with that, I yield back the balance of my time.

Chairman GRAVES. Do other Members wish to be recognized for a statement on H.R. 3985? Ms. Chu.

Ms. CHU. I hear over and over again from small businesses one question: How do I break into federal contracting? With average annual spending at \$500 billion there is no better way for small businesses to expand during these tough times than through federal contracts.

Historically, however, it has been difficult for small businesses to gain a toehold in the federal procurement system. To help small businesses gain entry into the federal marketplace, mentor-protégé programs were established. This program allows smaller firms the opportunity to work directly with larger vendors. This can provide them with vital experience and lead to future opportunities, which will, hopefully, lead to getting more federal contracts in the hands of small business.

The Building Better Businesses Partnership Act of 2012 will help small firms break into federal contracting by making it easier for them to join mentor-protégé programs. This bill will streamline the process by putting these programs under one agency, the SBA, and create better oversight over the programs so that small businesses truly benefit from the agreements. It will address the GAO report issues by determining how well the program goals have been achieved.

Helping small businesses win contracts will help put Americans back to work. And with two out of every three jobs coming from small businesses, this bill will help the true driving force behind America's economy.

I ask my colleagues on the Small Business Committee for their support. Thank you, and I yield back.

Chairman GRAVES. Does any other Member wish to be heard on the bill?

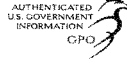
The Committee now moves consideration of H.R. 3985. Clerk, please report the title of the bill.

The CLERK. H.R. 3985: To amend the Small Business Act with respect to mentor-protégé programs and for other purposes.

Chairman GRAVES. Without objection H.R. 3985 is considered read and open for amendment at any point.

[The bill H.R. 3985 follows:]





112TH CONGRESS  
2D SESSION

# H. R. 3985

To amend the Small Business Act with respect to mentor-protege programs,  
and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 8, 2012

Mr. SCHILLING (for himself and Ms. CHU) introduced the following bill; which  
was referred to the Committee on Small Business

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## A BILL

To amend the Small Business Act with respect to mentor-  
protege programs, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

### 3 SECTION 1. SHORT TITLE.

4 This Act may be cited as the “Building Better Busi-  
5 ness Partnerships Act of 2012”.

### 6 SEC. 2. MENTOR-PROTEGE PROGRAMS.

7 The Small Business Act (15 U.S.C. 631 et seq.) is  
8 amended—

9 (1) by redesignating section 45 as section 46;

10 and

1 (2) by inserting after section 44 the following:

2 **“SEC. 45. MENTOR-PROTEGE PROGRAMS.**

3 “(a) ADMINISTRATION PROGRAM.—

4 “(1) AUTHORITY.—The Administrator is au-  
5 thorized to establish a mentor-protege program for  
6 all small business concerns.

7 “(2) MODEL FOR PROGRAM.—The mentor-pro-  
8 tege program established under paragraph (1) shall  
9 be identical to the mentor-protege program of the  
10 Administration for small business concerns that par-  
11 ticipate in the program under section 8(a) of this  
12 Act (as in effect on the date of enactment of the  
13 Building Better Business Partnerships Act of 2012),  
14 except that the Administrator may modify the pro-  
15 gram to the extent necessary given the types of  
16 small business concerns included as proteges.

17 “(b) PROGRAMS OF OTHER AGENCIES.—

18 “(1) APPROVAL REQUIRED.—Except as pro-  
19 vided in this subsection, a Federal department or  
20 agency may not carry out a mentor-protege program  
21 for small business concerns unless—

22 “(A) the head of the department or agency  
23 submits a plan to the Administrator for the  
24 program; and

1           “(B) the Administrator approves such  
2           plan.

3           “(2) BASIS FOR APPROVAL.—The Adminis-  
4           trator shall approve or disapprove a plan submitted  
5           under paragraph (1) based on whether the program  
6           proposed—

7           “(A) will assist proteges to compete for  
8           Federal prime contracts and subcontracts; and

9           “(B) complies with the regulations issued  
10          under paragraph (3).

11          “(3) REGULATIONS.—Not later than 270 days  
12          after the date of enactment of the Building Better  
13          Business Partnerships Act of 2012, the Adminis-  
14          trator shall issue, subject to notice and comment,  
15          regulations with respect to mentor-protege pro-  
16          grams, which shall ensure that such programs im-  
17          prove the ability of proteges to compete for Federal  
18          prime contracts and subcontracts and which shall  
19          address, at a minimum, the following:

20               “(A) Eligibility criteria for program par-  
21               ticipants, including any restrictions on the num-  
22               ber of mentor-protege relationships permitted  
23               for each participant.

24               “(B) The types of developmental assistance  
25               to be provided by mentors, including how the

1 assistance provided shall improve the competi-  
2 tive viability of the proteges.

3 “(C) Whether any developmental assist-  
4 ance provided by a mentor may affect the sta-  
5 tus of a program participant as a small busi-  
6 ness concern due to affiliation.

7 “(D) The length of mentor-protege rela-  
8 tionships.

9 “(E) The effect of mentor-protege relation-  
10 ships on contracting.

11 “(F) Benefits that may accrue to a mentor  
12 as a result of program participation.

13 “(G) Reporting requirements during pro-  
14 gram participation.

15 “(H) Postparticipation reporting require-  
16 ments.

17 “(I) The need for a mentor-protege pair, if  
18 accepted to participate as a pair in a mentor-  
19 protege program of any Federal department or  
20 agency, to be accepted to participate as a pair  
21 in all Federal mentor-protege programs.

22 “(J) Actions to be taken to ensure benefits  
23 for proteges.

24 “(4) LIMITATION ON APPLICABILITY.—Notwith-  
25 standing the provisions of subsection (b)(1), the pro-

visions of subsection (b)(1) shall apply to the following:

“(A) Any mentor-protege program of the Department of Defense in effect on the date of enactment of the Building Better Business Partnerships Act of 2012.

“(B) Any mentoring assistance provided under a Small Business Innovation Research Program or a Small Business Technology Transfer Program.

“(C) Until the date that is 1 year after the date on which the Administrator issues regulations under paragraph (3), any Federal department or agency operating a mentor-protege program in effect on the date of enactment of the Building Better Business Partnerships Act of 2012.

“(c) REPORTING.—

“(1) IN GENERAL.—Not later than 2 years after the date of enactment of the Building Better Business Partnerships Act of 2012, and annually thereafter, the Administrator shall submit to the Committee on Small Business of the House of Representatives and the Committee on Small Business and Entrepreneurship of the Senate a report that—

1           “(A) identifies each Federal mentor-pro-  
2       tege program;

3           “(B) specifies the number of participants  
4       in each such program, including the number of  
5       participants that are—

6           “(i) small business concerns;

7           “(ii) small business concerns owned  
8       and controlled by service-disabled veterans;

9           “(iii) qualified HUBZone small busi-  
10      ness concerns;

11          “(iv) small business concerns owned  
12       and controlled by socially and economically  
13       disadvantaged individuals; or

14          “(v) small business concerns owned  
15       and controlled by women;

16          “(C) describes the type of assistance pro-  
17       vided to proteges under each such program;

18          “(D) describes the benefits provided to  
19       mentors under each such program; and

20          “(E) describes the progress of proteges  
21       under each such program with respect to com-  
22       peting for Federal prime contracts and sub-  
23       contracts.

24          “(2) PROVISION OF INFORMATION.—The head  
25       of each Federal department or agency carrying out

1 a mentor-protege program shall provide to the Ad-  
2 ministrator, upon request, the information necessary  
3 for the Administrator to submit a report required  
4 under paragraph (1).

5 “(d) DEFINITIONS.—In this section, the following  
6 definitions apply:

7 “(1) MENTOR.—The term ‘mentor’ means a  
8 for-profit business concern, of any size, that—

9 “(A) has the ability to assist and commits  
10 to assisting a protege to compete for Federal  
11 prime contracts and subcontracts; and

12 “(B) satisfies any other requirements im-  
13 posed by the Administrator.

14 “(2) MENTOR-PROTEGE PROGRAM.—The term  
15 ‘mentor-protege program’ means a program that  
16 pairs a mentor with a protege for the purpose of as-  
17 sisting the protege to compete for Federal prime  
18 contracts and subcontracts.

19 “(3) PROTEGE.—The term ‘protege’ means a  
20 small business concern that—

21 “(A) is eligible to enter into Federal prime  
22 contracts and subcontracts; and

23 “(B) satisfies any other requirements im-  
24 posed by the Administrator.”.

○

Chairman GRAVES. Does anyone have an amendment? I believe, Ms. Chu, you have an amendment.

Ms. CHU. Yes, sir. Yes. Mr. Chairman, I have a perfecting amendment to H.R. 3985.

Chairman GRAVES. Clerk, please report the amendment.

The CLERK. Amendment 1 to H.R. 3985 offered by Ms. Chu of California.

Chairman GRAVES. Without objection the amendment is considered as read. The gentlelady has five minutes.

[Amendment 1 to H.R. 3985 offered by Ms. Chu follows:]



**AMENDMENT TO H.R. 3985**  
**OFFERED BY MS. CHU OF CALIFORNIA**

Page 4, line 23, strike the period at the end and insert the following: “, and to protect proteges against actions by the mentor that—”

- 1 (i) may adversely affect the proteges
- 2 status as a small business; or
- 3 (ii) provide disproportionate economic
- 4 benefits to the mentor relative to those
- 5 provided the protege.

Page 7, line 24, insert after “the Administrator.” the following:

- 6 “(e) CURRENT MENTOR PROTEGE AGREEMENTS.—
- 7 Mentors and proteges with approved agreement in a pro-
- 8 gram operating pursuant to subsection (b)(4)(C) shall be
- 9 permitted to continue their relationship according to the
- 10 terms specified in their agreement until the expiration
- 11 date specified in the agreement.
- 12 “(f) SUBMISSION OF AGENCY PLANS.—Agencies op-
- 13 erating mentor protege programs pursuant to subsection
- 14 (b)(4)(C) must submit the plans specified in subsection
- 15 (b)(1)(A) to the Administrator within 6 months of the pro-

1 mulgation of rules required by subsection (b)(3). The Ad-  
 2 ministrator shall provide initial comments on each plan  
 3 within 60 days of receipt, and final approval or denial of  
 4 each plan with 180 days of receipt.”.

Page 7, insert after line 24 the following:

5 **SEC. 3. GOVERNMENT ACCOUNTABILITY OFFICE REPORT.**

6 Not later than the date that is 2 years after the agen-  
 7 cies operating subject to section 45(b)(4)(C) of the Small  
 8 Business Act have their plans approved or denied by the  
 9 Administrator, the Comptroller General of the United  
 10 States shall conduct a study to—

11 (1) update the study required by section 1345  
 12 of the Small Business Jobs Act of 2010 (Pub. Law  
 13 111-240);

14 (2) examine whether potential affiliation issues  
 15 between mentors and proteges under the prior pro-  
 16 grams have been resolved by enactment of this Act;  
 17 and

18 (3) examine whether the regulations issued pur-  
 19 suant to section 45(b)(3)(I) of the Small Business  
 20 Act have increased opportunities for mentor-protege  
 21 pairs, and if they have decreased the paperwork re-  
 22 quired for such pairs participating in programs at  
 23 multiple agencies.



Ms. CHU. Mr. Chair, I have a perfecting amendment to the Building Better Business Partnerships Act. The amendment clarifies that program regulations must protect protégés against actions that negatively impact them or provide disproportionate benefits to the mentor. It also allows for current mentor-protégé agreements to be grandfathered into the new program until the expiration date of their agreement.

The amendment also says that agencies operating mentor-protégé programs will be allowed six months after the regulations are transmitted to submit their mentor-protégé plans and then provide a detailed timeline for SBA's approval of these plans.

Finally, the amendment requires a GAO report to assess the impact of the changes to the mentor-protégé program.

This amendment was crafted with input from the majority and minority sides of the Committee and strengthens the language of the bill. I ask for the Committee's support.

Chairman GRAVES. Does any other Member wish to be heard on the amendment? Mr. Schilling.

Mr. SCHILLING. Yes, thank you. I believe this is a good amendment that makes H.R. 3985 stronger, more accountable, and further protects small businesses, and I urge Members to support Representative Chu's amendment.

Chairman GRAVES. Does any other Member wish to be heard on the amendment?

Seeing none, the gentlelady's amendment, I think it furthers the intention of the bill and it was done through bipartisan discussions. So with that, I am very pleased to support the gentlelady's amendment.

And a question. The question is on the amendment offered by Ms. Chu. All those in favor say aye.

[A chorus of ayes.]

Chairman GRAVES. Opposed no.

[No response.]

Chairman GRAVES. In the opinion of the chair the ayes have it. The ayes do have it. The amendment is agreed to.

Does any other Member wish to be recognized for an amendment?

Seeing none, the question is on agreeing to H.R. 3985 as amended. All those in favor say aye.

[A chorus of ayes.]

Chairman GRAVES. All opposed no.

[No response.]

Chairman GRAVES. It is the opinion of the chair that the ayes have it. H.R. 3985 is agreed to without objection. A quorum being present, the bill is favorably reported to the House. And without objection the Committee staff is authorized to correct punctuation and make other necessary technical changes and conforming changes.

Our next bill for consideration is H.R. 3987, the "Small Business Protection Act of 2012," which is introduced by Mr. Walsh and Mr. Connolly. I now yield to Mr. Walsh to speak on 3987.

Mr. WALSH. Thank you, Mr. Chairman, and thank you, Ranking Member Velázquez. As you know, the SBA has proposed radically new size standards for small business government contracting that

do not just alter the size standard for each industry, but, in some instances, actually combine several different industries into a new common group under a single size standard. The problem is that in creating these new common groups SBA, by its own analysis, is excluding legitimate small businesses from small business contracting programs and allowing large businesses to participate in the same programs.

For example, let us look at architecture and engineering firms. SBA's own metrics and analysis shows that architecture firms should have a small business size standard of \$7 million and engineering firms of 25.5 million. Yet, SBA has decided to combine them into a common group and assign them a size standard of 7 million, which is completely inappropriate for either of them. In the one instance it legitimately excludes small businesses from competing for government contracts and in the other it forces legitimate small businesses to compete against much larger firms. In fact, the American Institute of Architecture has estimated that this new size standard will include 98 percent of all architecture firms.

I think we can all agree that situations like this are not in the best interest of small businesses. After all, size standards do not exist for the ease of the SBA, but for the benefit of America's small businesses. The Small Business Protection Act is simple: It protects legitimate small businesses in government contracting by requiring that the size standard assigned to each new common group is appropriate for each industry included in that group. Without this bill small businesses, the backbone of the American economy, will be driven out of competition for government contracts.

And I yield back.

Chairman GRAVES. I now recognize Ranking Member Velázquez for opening comments.

Ms. VELAZQUEZ. Mr. Chairman, the complexity of size standards is only exceeded by the process in which they are set and revised. Providing greater transparency to this complicated machinery is important. While SBA has recently taken major actions on size standards, this proposal will obviously have no effect on them.

However, increasing small businesses' awareness of the size standard process during the proposed rulemaking stage is essential. To this point it is important that SBA provide the public with a competitive landscape of the affected industry. The approach the agency used to determine the new standard, the source of the agency's data, and the specific impact on the industry, such openness will only enhance small businesses' ability to understand what has become an opaque decision-making process at the agency. Given the size standard determinations can limit firms' ability to secure government contracts, receiving training or secure financing, it is vital that these decisions are done in the most transparent fashion possible. Bringing sunlight to this shadowy area of the SBA should be a priority.

And for that, I thank you and I yield back the balance of my time.

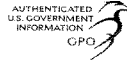
Chairman GRAVES. Does any other Member wish to be recognized for a statement on H.R. 3987?

Seeing none, I think this bill addresses a central issue of the Committee's work and that is what is a small business. So without objection, would the clerk please report them?

The CLERK. H.R. 3987: To amend the Small Business Act with respect to small business concerning size standards and for other purposes.

Chairman GRAVES. Without objection H.R. 3987 is considered read and open for amendment at any point.

[The bill H.R. 3987 follows:]



112TH CONGRESS  
2D SESSION

# H. R. 3987

To amend the Small Business Act with respect to small business concern size standards, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 8, 2012

Mr. WALSH of Illinois (for himself and Mr. CONNOLLY of Virginia) introduced the following bill; which was referred to the Committee on Small Business

---

## A BILL

To amend the Small Business Act with respect to small business concern size standards, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Small Business Protec-  
5 tion Act of 2012”.

6 **SEC. 2. SMALL BUSINESS CONCERN SIZE STANDARDS.**

7 Section 3 of the Small Business Act (15 U.S.C. 632)  
8 is amended—

9 (1) by inserting after the section enumerator  
10 the following: “**DEFINITIONS.**”; and

1 (2) in subsection (a)—

2 (A) by striking the subsection enumerator  
3 and inserting the following:

4 “(a) SMALL BUSINESS CONCERNS.—”;

5 (B) in paragraph (1) by striking “(1) For  
6 the purposes” and inserting the following:

7 “(1) IN GENERAL.—For the purposes”;

8 (C) in paragraph (3) by striking “(3)  
9 When establishing” and inserting the following:

10 “(3) VARIATION BY INDUSTRY AND CONSIDER-  
11 ATION OF OTHER FACTORS.—When establishing”;

12 (D) by moving paragraph (5), including  
13 each subparagraph and clause therein, 2 cms to  
14 the right; and

15 (E) by adding at the end the following:

16 “(6) COMMON SIZE STANDARDS.—In carrying  
17 out this subsection, the Administrator may establish  
18 or approve a single size standard for a grouping of  
19 four digit North American Industrial Classification  
20 codes only if the Administrator makes publicly avail-  
21 able, not later than the date on which such size  
22 standard is established or approved, a justification  
23 demonstrating that such size standard is appropriate  
24 for each individual industry classification included in  
25 the grouping.

1           “(7) PROPOSED RULE MAKING.—In conducting  
2       rulemaking to revise, modify or establish size stand-  
3       ards pursuant to this section, the Administrator  
4       shall consider and address the following:

5           “(A) a detailed description of the industry  
6       for which the new size standard is proposed;

7           “(B) an analysis of the competitive envi-  
8       ronment for that industry;

9           “(C) the approach the Administrator used  
10      to develop the proposed standard including the  
11      source of all data used to develop the proposed  
12      rulemaking; and

13          “(D) the anticipated effect of the proposed  
14      rulemaking on the industry, including the num-  
15      ber of concerns not currently considered small  
16      that would be considered small under the pro-  
17      posed rulemaking and the number of concerns  
18      currently considered small that would be  
19      deemed other than small under the proposed  
20      rulemaking.”.

○



Chairman GRAVES. Does any Member have an amendment? I think, Mr. Walsh, you do.

Mr. WALSH. Yes, Mr. Chairman. My amendment makes two——

Chairman GRAVES. Let the clerk report it.

Mr. WALSH. Amendment Number 1.

The CLERK. Amendment Number 1 to H.R. 3987 offered by Mr. Walsh of Illinois.

Chairman GRAVES. Without objection the amendment is considered read. The gentleman has five minutes.

[Amendment 1 to H.R. 3987 offered by Mr. Walsh follows:]

**AMENDMENT TO H.R. 3987**  
**OFFERED BY MR. WALSH OF ILLINOIS**

Beginning on page 3, line 1, strike “In conducting” and all that follows through “the following” on line 4, and insert the following: “In conducting rulemaking to revise, modify or establish size standards pursuant to this section, the Administrator shall consider, and address, and make publicly available as part of the notice of proposed rule making and notice of final rule each of the following”.

Page 3, line 20, insert before the period at the end the following:

1           “(8) NUMBER OF SIZE STANDARDS.—The Ad-  
2           ministrator shall not limit the number of size stand-  
3           ards it creates pursuant to paragraph (2), and shall  
4           assign the appropriate size standard to each North  
5           American Industrial Classification System Code.”.



Mr. WALSH. Thank you, Mr. Chairman. The amendment makes two small changes to the Small Business Protection Act.

First, it requires that the SBA make publicly available its analysis and rationale when revising size standards or creating new ones. I think we can all agree, as the Ranking Member said, that more transparency here is a good thing and will help prevent further instances like the one we are correcting here.

Second, it prohibits SBA from artificially limiting the number of size standards. Our goal with this entire process is for the SBA to create and maintain the most accurate size standards possible. This amendment keeps the SBA from choosing administrative ease over the correct number of size standards.

Thank you, Mr. Chairman, and I yield back.

Chairman GRAVES. Does any other Member wish to be heard on the amendment?

Seeing none, the amendment as developed through discussion—

Ms. VELÁZQUEZ. Yes, Mr. Chairman, I would like—

Chairman GRAVES. Oh, yes, absolutely.

Ms. VELÁZQUEZ. I would like to say something about this amendment.

Chairman GRAVES. Of course.

Ms. VELÁZQUEZ. Mr. Chairman, this amendment will guarantee that SBA does not try to make the industry fit the size standard, but that an individual size standard will be created for each industry. While the amendment made great strides in trying to guarantee fair process for small businesses, the amendment and corresponding bill still failed to provide an agency appeal process for small businesses if they feel the size standard does not adequately represent their industry. Instead, small businesses will be faced with either expending their limited time and money to challenge the size standard or, the more likely scenario, accept the standard developed by SBA and be excluded from small businesses programming.

I hope that as we move forward with this piece of legislation and on future bills we can come up with a meaningful option for small businesses to challenge unfair standards. Thank you.

Chairman GRAVES. Does any other Member wish to be heard on the amendment?

The basis of the SBA's size standards, I think, should be public so that businesses can better understand the SBA's rationale and challenge it when appropriate. Furthermore, I think SBA should not be allowed to force over 1,100 industries into 16 size standards. The facts, not SBA's administrative ease, should dictate the size standards, and I do support the amendment.

So with that, the question is on the amendment offered by Mr. Walsh. All those in favor say aye.

[A chorus of ayes.]

Chairman GRAVES. All opposed no.

[No response.]

Chairman GRAVES. In the opinion of the chair the ayes have it. The amendment is agreed to.

Does any other Member wish to offer an amendment?

Seeing none, the question is on agreeing to H.R. 3987 as amended. All those in favor say aye.

[A chorus of ayes.]

Chairman GRAVES. All opposed no.

[No response.]

Chairman GRAVES. In the opinion of the chair the ayes have it. H.R. 3987 is agreed to without objection. A quorum being present, the bill is favorably reported to the House. And without objection the Committee staff is authorized to correct punctuation and make other necessary technical corrections and conforming changes.

With that, our next bill for consideration is H.R. 4081, the "Contractor Opportunity Protection Act of 2012," which I introduced with Mr. West. This bill addresses what may be the top complaint I received from small business contractors, which is contract bundling or the process of taking what could be several small contracts and packing them together as one large contract that is simply too big for small businesses to compete. Sometimes bundling is justified, in which case it can proceed. But in other cases, it needlessly shuts down so many small businesses.

This bill does four things. First, it clarifies the definition of "bundling" so that we can capture construction contracts. Second, it improves processes by eliminating the needless and duplicative distinctions between bundling and consolidation. And third, it makes the process objective and transparent using boards of contract appeals and Government Accountability Office's existing contracting appeals process to ensure that a neutral third-party makes decisions about bundling and to give small businesses a voice in this process. And finally, it holds agencies accountable.

This bill requires agencies to demonstrate that the anticipated savings on a bundled contract actually materialize before they continue bundling a successor contract. I want to emphasize that I think this is one of the most important bills that we can pass if we want to help small businesses compete and save taxpayers money, and I urge the Committee to support it.

I now recognize Ranking Member Velázquez for her statement.

Ms. VELÁZQUEZ. Thank you, Mr. Chairman. This is a good bill, straightforward. And for the longest time now at every meeting that we have done, hearing, in terms of contracting, we hear time and time again how contract bundling and contract consolidation is hurting small businesses.

In fiscal year 2011, for instance, more than \$50 billion worth of contracts were awarded through bundled or consolidated contracts. To address this, the legislation before us makes several key statutory changes. Most importantly, it expands the definition of what a bundled contract is and requires review by the SBA and procurement center representatives before the proposed procurement could occur, changes that were included in H.R. 1873, which this Committee approved in the 110th Congress.

Similarly, an appeal process is included that enables both the SBA and affected small businesses to request further action to unbundle contracts. These are positive changes that will help small firms.

However, changes to laws without an accompanying increase in enforcement personnel may do more harm than good. And in this

regard, there is a glaring lack in oversight when trying to stop contract bundling. While government procurement spending has more than doubled between 2001 and 2010, from 233 billion to 536 billion, resources dedicated to anti-bundling efforts have dwindled. So while the statutory changes in this legislation are welcome, it is unfortunate that we are not adding more cops on the beat.

Do not get me wrong, this legislation makes positive changes, but without adequate enforcement, small businesses may be left out without the real change they crave.

And with that, I yield back.

Chairman GRAVES. Are there any other Members who wish to make a statement on 4081?

Mr. OWENS. Mr. Chairman.

Chairman GRAVES. Yes, sir.

Mr. OWENS. Thank you. A question actually. Has any analysis been done to determine whether or not this will increase costs for government agencies if you fail to bundle what would be called small contracts?

Chairman GRAVES. Barry.

COUNSEL. I am not sure I actually understand the question. The concept of contract bundling implies that the federal agency has done an assessment as to whether or not it is actually saving money by taking contracts that were previously done by small businesses and combining them.

Mr. OWENS. So then, in fact, if I am understanding your response, even though you did not understand my question, in fact, they have done an analysis that the bundle is actually cheaper before they would go ahead and bundle.

COUNSEL. There is nothing currently in law or changes being made in H.R. 4081 that prevents the government from bundling. It prevents the government from bundling when the government does not obtain what are called substantial measurable benefits. Those may be cost savings, they may be savings related to the delivery of the product as opposed to necessarily the actual cost savings. In other words, there may be other values that the government captures other than purely costs associated with the savings.

Mr. OWENS. Okay. Thank you.

COUNSEL. Mm-hmm.

Chairman GRAVES. Any other Member wish to be heard on H.R. 4081?

Clerk, please report the title of the bill.

The CLERK. H.R. 4081: To amend the Small Business Act to consolidate and revise provisions related to contract bundling and for other purposes.

Chairman GRAVES. Without objection H.R. 4081 is considered as read and open for amendment at any point.

[The bill H.R. 4081 follows:]



112TH CONGRESS  
2D SESSION

# H. R. 4081

To amend the Small Business Act to consolidate and revise provisions relating to contract bundling, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 17, 2012

Mr. GRAVES of Missouri (for himself and Mr. WEST) introduced the following bill; which was referred to the Committee on Small Business

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## A BILL

To amend the Small Business Act to consolidate and revise provisions relating to contract bundling, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

### 3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Contractor Oppor-  
5 tunity Protection Act of 2012”.

### 6 **SEC. 2. CONSOLIDATION OF PROVISIONS RELATING TO** 7 **CONTRACT BUNDLING.**

8 Section 44 of the Small Business Act (15 U.S.C.  
9 657q) is amended to read as follows:

1 **“SEC. 44. CONTRACT BUNDLING.**

2 “(a) DEFINITIONS.—In this Act:

3 “(1) BUNDLED CONTRACT.—The term ‘bundled  
4 contract’—

5 “(A) means a contract that is entered into  
6 to meet procurement requirements that are  
7 combined in a bundling of contract require-  
8 ments, without regard to whether a study of the  
9 effects of the solicitation on Federal officers or  
10 employees has been made; and

11 “(B) does not include—

12 “(i) a contract with an aggregate dol-  
13 lar value below the dollar threshold; or

14 “(ii) a single award contract for the  
15 acquisition of a weapons system acquired  
16 through a major defense acquisition.

17 “(2) BUNDLING METHODOLOGY.—The term  
18 ‘bundling methodology’ means—

19 “(A) a solicitation to obtain offers for a  
20 single contract or a multiple award contract;

21 “(B) a solicitation of offers for the  
22 issuance of a task or a delivery order under an  
23 existing single or multiple award contract; or

24 “(C) the creation of any new procurement  
25 requirements that permits a combination of  
26 contract requirements, including any combina-

1           tion of contract requirements or order require-  
2           ments.

3           “(3) BUNDLING OF CONTRACT REQUIRE-  
4           MENTS.—The term ‘bundling of contract require-  
5           ments’, with respect to the contract requirements of  
6           a Federal agency—

7           “(A) means the use of any bundling meth-  
8           odology to satisfy 2 or more procurement re-  
9           quirements for new or existing goods or services  
10          provided to or performed for the Federal agen-  
11          cy, including any construction services, that is  
12          likely to be unsuitable for award to a small-  
13          business concern due to—

14          “(i) the diversity, size, or specialized  
15          nature of the elements of the performance  
16          specified;

17          “(ii) the aggregate dollar value of the  
18          anticipated award;

19          “(iii) the geographical dispersion of  
20          the contract performance sites; or

21          “(iv) any combination of the factors  
22          described in clauses (i), (ii), and (iii); and

23          “(B) does not include the use of a bun-  
24          dling methodology for an anticipated award



1 with an aggregate dollar value below the dollar  
2 threshold.

3 “(4) CHIEF ACQUISITION OFFICER.—The term  
4 ‘Chief Acquisition Officer’ means the employee of a  
5 Federal agency designated as the Chief Acquisition  
6 Officer for the Federal agency under section 16(a)  
7 of the Office of Federal Procurement Policy Act (41  
8 U.S.C. 1702(a)).

9 “(5) CONTRACT.—The term ‘contract’ includes,  
10 for purposes of this section, any task order made  
11 pursuant to an indefinite quantity, indefinite deliv-  
12 ery contract.

13 “(6) DOLLAR THRESHOLD.—The term ‘dollar  
14 threshold’ means—

15 “(A) in the case of a contract for construc-  
16 tion, \$5,000,000; and

17 “(B) in any other case, \$2,000,000.

18 “(7) MAJOR DEFENSE ACQUISITION PRO-  
19 GRAM.—The term ‘major defense acquisition pro-  
20 gram’ has the meaning given in section 2430(a) of  
21 title 10, United States Code.

22 “(8) PROCUREMENT REQUIREMENT.—The term  
23 ‘procurement requirement’ means a determination  
24 by an agency that a specified good or service is  
25 needed to satisfy the mission of the agency.

1           “(9) SENIOR PROCUREMENT EXECUTIVE.—The  
2           term ‘senior procurement executive’ means an offi-  
3           cial designated under section 16(c) of the Office of  
4           Federal Procurement Policy Act (41 U.S.C.  
5           1702(c)) as the senior procurement executive for a  
6           Federal agency.

7           “(b) POLICY.—The head of each Federal agency shall  
8           ensure that the decisions made by the Federal agency re-  
9           garding bundling of contract requirements of the Federal  
10          agency are made with a view to providing small business  
11          concerns with appropriate opportunities to participate as  
12          prime contractors and subcontractors in the procurements  
13          of the Federal agency.

14          “(c) CONTRACT BUNDLING.—

15                 “(1) PROPOSED PROCUREMENTS.—Paragraphs  
16                 (2) through (4) shall apply to to a proposed procure-  
17                 ment if the proposed procurement—

18                         “(A) would adversely affect one or more  
19                         small business concerns, including the potential  
20                         loss of an existing contract;

21                         “(B) includes, in its statement of work,  
22                         goods or services—

23                                 “(i)(I) currently being performed by a  
24                                 small business; and

1 “(II) if the proposed procurement is  
2 in a quantity or estimated dollar value the  
3 magnitude of which renders small business  
4 prime contract participation unlikely; or

5 “(ii)(I) that are of a type that the Ad-  
6 ministrator through market research can  
7 demonstrate that two or more small busi-  
8 nesses are capable of performing; and

9 “(II) if the proposed procurement  
10 would be combined with other require-  
11 ments for goods and services;

12 “(C) is for construction and—

13 “(i) seeks to package or combine dis-  
14 crete construction projects; or

15 “(ii) the value of the goods or services  
16 subject to the contract exceeds the dollar  
17 threshold; or

18 “(D) is determined by the Administrator  
19 to have a solicitation that involves an unneces-  
20 sary or unjustified bundling of contract require-  
21 ments.

22 “(2) RESPONSIBILITY OF THE PROCUREMENT  
23 ACTIVITY.—At least 45 days prior to the issuance of  
24 a solicitation, the Procurement Activity shall notify  
25 and provide a copy of the proposed procurement to

1 the procurement center representative assigned to  
2 the Procurement Activity. The 45-day notification  
3 process under this paragraph shall occur concu-  
4 rently with other processing steps required prior to  
5 issuance of the solicitation. The notice shall include  
6 a statement setting forth the proposed procurement  
7 strategy required by subsection (e), and explaining—

8 “(A) why the proposed acquisition cannot  
9 be divided into reasonably small lots (not less  
10 than economic production runs) to permit offers  
11 on quantities less than the total requirement;

12 “(B) if applicable, a list of the incumbent  
13 contractors disaggregated by and including  
14 names, addresses, and whether or not the con-  
15 tractor is a small business concern;

16 “(C) a description of the industries that  
17 might be interested in bidding on the contract  
18 requirements;

19 “(D) the number of small businesses listed  
20 in the industry categories that could be ex-  
21 cluded from future bidding if the contract is a  
22 bundled contract, including any small business  
23 bidders that had bid on previous procurement  
24 requirements that are included in the bundling  
25 of contract requirements;

1 “(E) why the delivery schedules cannot be  
2 established on a realistic basis that will encour-  
3 age small business participation to the extent  
4 consistent with the actual requirements of the  
5 Government;

6 “(F) why the proposed acquisition cannot  
7 be offered so as to make small business partici-  
8 pation likely;

9 “(G) why construction cannot be procured  
10 as separate discrete projects; and

11 “(H) why the agency has determined that  
12 the bundled contract is necessary and justified.

13 “(3) PUBLICATION OF NOTICE STATEMENT.—  
14 Concurrently, the statement required in paragraph  
15 (2) shall be published in the Federal contracting op-  
16 portunities database.

17 “(4) RECOMPETITION OF A PREVIOUSLY BUN-  
18 DLED CONTRACT.—If the proposed procurement is a  
19 previously bundled contract that is to be recompeted  
20 as a bundled contract, the Administrator shall deter-  
21 mine, with the assistance of the agency proposing  
22 the procurement—

23 “(A) the amount of savings and benefits  
24 (in accordance with subsection (d)) achieved  
25 under the bundling of contract requirements;

1           “(B) whether such savings and benefits  
2           will continue to be realized if the contract re-  
3           mains bundled, and whether such savings and  
4           benefits would be greater if the procurement re-  
5           quirements were divided into separate solicita-  
6           tions suitable for award to small business con-  
7           cerns;

8           “(C) the dollar value of subcontracts  
9           awarded to small business concerns under the  
10          bundled contract, disaggregated by North  
11          American Industrial Classification Code;

12          “(D) the percentage of subcontract dollars  
13          awarded to small businesses under the bundled  
14          contract, disaggregated by North American In-  
15          dustrial Classification Code; and

16          “(E) the dollar amount and percentage of  
17          prime contract dollars awarded to small busi-  
18          nesses in the primary North American Indus-  
19          trial Classification Code for that bundled con-  
20          tract during each of the two fiscal years pre-  
21          ceding the award of the bundled contract and  
22          during each fiscal year of the performance of  
23          the bundled contract.

24          “(5) FAILURE TO PROVIDE NOTICE.—If no no-  
25          tification of the proposed procurement or accom-

1     panying statement is received, but the Administrator  
2     determines that the proposed procurement is a pro-  
3     posed procurement described in paragraph (1), then  
4     the Administrator shall require that such a state-  
5     ment of work be completed by the Procurement Ac-  
6     tivity and sent to the procurement center representa-  
7     tive and postpone the solicitation process for at least  
8     10 days but not more than 45 days to allow the Ad-  
9     ministrator to review the statement and make rec-  
10    ommendations as described in this section before the  
11    procurement process is continued.

12         “(6) RESPONSIBILITY OF THE PROCUREMENT  
13    CENTER REPRESENTATIVE.—Within 15 days after  
14    receipt of the proposed procurement and accom-  
15    panying statement, if the procurement center rep-  
16    resentative believes that the procurement as pro-  
17    posed will render small business prime contract par-  
18    ticipation unlikely, the representative shall rec-  
19    ommend to the Procurement Activity alternative pro-  
20    curement methods which would increase small busi-  
21    ness prime contracting opportunities.

22         “(7) DISAGREEMENT BETWEEN THE ADMINIS-  
23    TRATION AND THE PROCUREMENT ACTIVITY.—

24                 “(A) IN GENERAL.—If a small business  
25                 concern would be adversely affected, directly or

1 indirectly, by the proposed procurement, and  
2 that small business concern or a trade associa-  
3 tion of which that small business concern is a  
4 member so requests, the Administrator may  
5 take action under this paragraph to further the  
6 interests of small businesses.

7 “(B) APPEAL TO AGENCY HEAD.—First,  
8 the proposed procurement shall be submitted  
9 for determination to the head of the contracting  
10 agency by the Administrator.

11 “(C) FAILURE TO AGREE.—Whenever the  
12 Administrator and the head of the contracting  
13 agency fail to agree—

14 “(i) the Administrator, within ten  
15 days after such decision, may file an ap-  
16 peal with the appropriate agency board of  
17 contract appeals;

18 “(ii) the board shall provide the Ad-  
19 ministrator and the head of the con-  
20 tracting agency the opportunity to provide  
21 their views on the disputed contract, except  
22 that no oral testimony or oral argument  
23 shall be permitted; and

24 “(iii) the board shall render its deci-  
25 sion, which shall be final agency action for



1 purposes of chapter 7 of title 5, United  
2 States Code, within 30 days after the ap-  
3 peal has been filed.

4 “(D) APPEAL BY AFFECTED SMALL BUSI-  
5 NESS CONCERN TO GAO.—Should the Adminis-  
6 trator choose not to pursue an appeal the ap-  
7 propriate board of contract appeals, a small  
8 business concern that would be adversely af-  
9 fected, directly or indirectly, by the procure-  
10 ment as proposed, or a trade association that  
11 includes such a small business concern as a  
12 member, may bring a protest to the Govern-  
13 ment Accountability Office. If the protest is  
14 brought by a trade association, the trade asso-  
15 ciation shall not be required to identify a spe-  
16 cific member in connection with the protest.

17 “(d) MARKET RESEARCH.—

18 “(1) IN GENERAL.—Before proceeding with an  
19 acquisition strategy that could lead to a contract  
20 containing bundling of contract requirements, the  
21 head of an agency shall conduct market research to  
22 determine whether bundling of the requirements is  
23 necessary and justified.

24 “(2) FACTORS.—For purposes of subsection  
25 (c)(1), bundling of contract requirements may be de-

1       terminated as being necessary and justified if, as com-  
2       pared to the benefits that would be derived from  
3       contracting to meet those requirements if not bun-  
4       dled, the Federal Government would derive from the  
5       bundling of contract requirements measurably sub-  
6       stantial benefits, including any combination of bene-  
7       fits that, in combination, are measurably substantial.

8           “(3) BENEFITS.—For the purposes of bundling  
9       of contract requirements, benefits described in para-  
10      graph (2) may include the following:

11           “(A) Cost savings.

12           “(B) Quality improvements.

13           “(C) Reduction in acquisition cycle times.

14           “(D) Better terms and conditions.

15           “(E) Any other benefits.

16           “(4) REDUCTION OF COSTS NOT DETERMINA-  
17      TIVE.—For purposes of this subsection:

18           “(A) Cost savings shall not include any re-  
19      duction in the use of military interdepartmental  
20      purchase requests or any similar transfer funds  
21      among Federal agencies for the use of a con-  
22      tract issued by another Federal agency.

23           “(B) The reduction of administrative or  
24      personnel costs alone shall not be a justification  
25      for bundling of contract requirements unless

1 the cost savings are expected to be substantial  
2 in relation to the dollar value of the procure-  
3 ment requirements to be bundled.

4 “(5) LIMITATION ON ACQUISITION STRATEGY.—  
5 The head of a Federal agency may not carry out an  
6 acquisition strategy that includes a bundling of con-  
7 tract requirements valued in excess of the dollar  
8 threshold, unless the senior procurement executive  
9 or, if applicable, Chief Acquisition Officer for the  
10 Federal agency, before carrying out the acquisition  
11 strategy certifies to the head of the Federal agency  
12 that steps will be taken to include small business  
13 concerns in the acquisition strategy.

14 “(e) STRATEGY SPECIFICATIONS.—If the head of a  
15 contracting agency determines that an acquisition plan or  
16 proposed procurement strategy for a procurement involves  
17 a bundling of contract requirements, the proposed acqui-  
18 sition plan or procurement strategy shall—

19 “(1) identify specifically the benefits anticipated  
20 to be derived from the bundling of contract require-  
21 ments;

22 “(2) set forth an assessment of the specific im-  
23 pediments to participation by small business con-  
24 cerns as prime contractors that result from the bun-  
25 dling of contract requirements and specify actions

1 designed to maximize small business participation as  
2 subcontractors (including suppliers) at various tiers  
3 under the contract or contracts that are awarded to  
4 meet the requirements; and

5 “(3) include a specific determination that the  
6 anticipated measurable benefits of the proposed bun-  
7 dled contract justify its use.

8 “(f) CONTRACT TEAMING.—In the case of a solicita-  
9 tion of offers for a bundled contract that is issued by the  
10 head of an agency, a small-business concern may submit  
11 an offer that provides for use of a particular team of sub-  
12 contractors for the performance of the contract. The head  
13 of the agency shall evaluate the offer in the same manner  
14 as other offers, with due consideration to the capabilities  
15 of all of the proposed subcontractors. If a small business  
16 concern teams under this paragraph, it shall not affect  
17 its status as a small business concern for any other pur-  
18 pose.

19 “(g) DATABASE, ANALYSIS, AND ANNUAL REPORT  
20 REGARDING CONTRACT BUNDLING.—

21 “(1) DATABASE.—Not later than 180 days  
22 after the date of the enactment of this subsection,  
23 the Administrator shall develop and shall thereafter  
24 maintain a database containing data and informa-  
25 tion regarding—

1           “(A) each bundled contract awarded by a  
2           Federal agency; and

3           “(B) each small business concern that has  
4           been displaced as a prime contractor as a result  
5           of the award of such a contract.

6           “(2) ANALYSIS.—For each bundled contract  
7           that is to be recompeted as a bundled contract, the  
8           Administrator shall determine—

9           “(A) the amount of savings and benefits  
10          (in accordance with subsection (d)) achieved  
11          under the bundling of contract requirements;  
12          and

13          “(B) whether such savings and benefits  
14          will continue to be realized if the contract re-  
15          mains bundled, and whether such savings and  
16          benefits would be greater if the procurement re-  
17          quirements were divided into separate solicita-  
18          tions suitable for award to small business con-  
19          cerns.

20          “(3) ANNUAL REPORT ON CONTRACT BUN-  
21          DLING.—

22          “(A) IN GENERAL.—Not later than 1 year  
23          after the date of the enactment of this para-  
24          graph, and annually in March thereafter, the  
25          Administrator shall transmit a report on con-

1 tract bundling to the Committee on Small Busi-  
2 ness of the House of Representatives and the  
3 Committee on Small Business and Entrepre-  
4 neurship of the Senate.

5 “(B) CONTENTS.—Each report trans-  
6 mitted under subparagraph (A) shall include—

7 “(i) data on the number, arranged by  
8 industrial classification, of small business  
9 concerns displaced as prime contractors as  
10 a result of the award of bundled contracts  
11 by Federal agencies; and

12 “(ii) a description of the activities  
13 with respect to previously bundled con-  
14 tracts of each Federal agency during the  
15 preceding year, including—

16 “(I) data on the number and  
17 total dollar amount of all contract re-  
18 quirements that were bundled; and

19 “(II) with respect to each bun-  
20 dled contract, data or information  
21 on—

22 “(aa) the justification for  
23 the bundling of contract require-  
24 ments;

43

18

1 “(bb) the cost savings real-  
2 ized by bundling the contract re-  
3 quirements over the life of the  
4 contract;

5 “(cc) the extent to which  
6 maintaining the bundled status  
7 of contract requirements is pro-  
8 jected to result in continued cost  
9 savings;

10 “(dd) the extent to which  
11 the bundling of contract require-  
12 ments complied with the con-  
13 tracting agency’s small business  
14 subcontracting plan, including  
15 the total dollar value awarded to  
16 small business concerns as sub-  
17 contractors and the total dollar  
18 value previously awarded to small  
19 business concerns as prime con-  
20 tractors; and

21 “(ee) the impact of the bun-  
22 dling of contract requirements on  
23 small business concerns unable to  
24 compete as prime contractors for  
25 the consolidated requirements

1 and on the industries of such  
 2 small business concerns, includ-  
 3 ing a description of any changes  
 4 to the proportion of any such in-  
 5 dustry that is composed of small  
 6 business concerns.

7 “(h) BUNDLING ACCOUNTABILITY MEASURES.—

8 “(1) TEAMING REQUIREMENTS.—Each Federal  
 9 agency shall include in each solicitation for any mul-  
 10 tiple award contract above the dollar threshold a  
 11 provision soliciting bids from any responsible source,  
 12 including responsible small business concerns and  
 13 teams or joint ventures of small business concerns.

14 “(2) POLICIES ON REDUCTION OF CONTRACT  
 15 BUNDLING.—

16 “(A) IN GENERAL.—Not later than 270  
 17 days after the date of enactment of this sub-  
 18 paragraph, the Federal Acquisition Regulatory  
 19 Council, established under section 25(a) of the  
 20 Office of Federal Procurement Policy Act (41  
 21 U.S.C. 1302(a)), shall amend the Federal Ac-  
 22 quisition Regulation issued under section 25 of  
 23 such Act to—

24 “(i) establish a Government-wide pol-  
 25 icy regarding contract bundling, including



1           regarding the solicitation of teaming and  
2           joint ventures; and

3           “(ii) require that the policy estab-  
4           lished under clause (i) be published on the  
5           website of each Federal agency.

6           “(B) RATIONALE FOR CONTRACT BUN-  
7           DLING.—Not later than 30 days after the date  
8           on which the head of a Federal agency submits  
9           the report required under section 15(h), the  
10          head of the Federal agency shall publish on the  
11          website of the Federal agency a list and ration-  
12          ale for any bundled contract for which the Fed-  
13          eral agency solicited bids or that was awarded  
14          by the Federal agency.”.

15   **SEC. 3. REPEAL OF REDUNDANT PROVISIONS.**

16          (a) CERTAIN PROVISIONS REGARDING CONTRACT  
17   BUNDLING REPEALED.—Section 15(a) of the Small Busi-  
18   ness Act (15 U.S.C. 644(a)), is amended by striking “If  
19   a proposed procurement includes” and all that follows  
20   through “the matter shall be submitted for determination  
21   to the Secretary or the head of the appropriate depart-  
22   ment or agency by the Administrator.”. All references in  
23   law to such sentences as they were in effect on the date  
24   that is 1 day prior to the effective date of this Act shall

1 be deemed to be references to section 44(d), as added by  
2 this Act.

3 (b) CERTAIN PROVISIONS REGARDING MARKET RE-  
4 SEARCH REPEALED.—Paragraphs (2) through (4) of sec-  
5 tion 15(e) of the Small Business Act (15 U.S.C. 644(e))  
6 are repealed. All references in law to such paragraphs, as  
7 in effect on the date that is one day prior to the effective  
8 date of this Act, shall be deemed to be references to sub-  
9 sections (d) through (f), respectively, of section 44 of the  
10 Small Business Act, as added by this section.

11 (c) CERTAIN PROVISIONS REGARDING CONTRACT  
12 BUNDLING DATABASE REPEALED.—

13 (1) Paragraph (1) of section 15(p) of the Small  
14 Business Act (15 U.S.C. 644(p)) is repealed.

15 (2) Paragraphs (2) through (4) of section 15(p)  
16 of the Small Business Act (15 U.S.C. 644(p)) are re-  
17 pealed. All references in law to such paragraphs, as  
18 in effect on the date that is one day prior to the ef-  
19 fective date of this Act, shall be deemed to be ref-  
20 erences to paragraphs (1) through (3), respectively,  
21 of section 44(h) of the Small Business Act, as added  
22 by this Act.

23 (d) CERTAIN PROVISIONS REGARDING BUNDLING  
24 ACCOUNTABILITY MEASURES REPEALED.—Paragraphs  
25 (1) and (2) of section 15(q) of the Small Business Act

1 (15 U.S.C 644(q)) are repealed. All references in law to  
2 such paragraphs, as in effect on the date that is one day  
3 prior to the effective date of this Act, shall be deemed to  
4 be references to paragraphs (1) and (2), respectively, of  
5 section 44(i) of the Small Business Act, as added by this  
6 Act.

7 (e) CERTAIN PROVISIONS REGARDING.—Subsection  
8 (o) of section 3 of the Small Business Act (15 U.S.C.)  
9 is repealed.

10 **SEC. 4. TECHNICAL AMENDMENTS.**

11 Section 15 of the Small Business Act (15 U.S.C. 644)  
12 is amended—

13 (1) in the subsection heading of subsection (p),  
14 to read as follows: “ACCESS TO DATA.”; and

15 (2) in the subsection heading of subsection (p),  
16 to read as follows: “REPORTS RELATED TO PRO-  
17 CUREMENT CENTER REPRESENTATIVES.”.

18 **SEC. 5. EXPANSION OF AGENCY'S RESPONSIBILITY.**

19 Section 44(b) of the Small Business Act (15 U.S.C.  
20 657q(b)) is amended by striking “appropriate” and insert-  
21 ing “the maximum practicable”.

○

Chairman GRAVES. And I do have an amendment in the nature of a substitute, if the clerk would read the amendment.

The CLERK. Amendment 1: Amendment in the nature of a substitute offered by Chairman Graves of Missouri.

Chairman GRAVES. Without objection the amendment is considered as read.

[Amendment 1 to H.R. 4081 offered by Chairman Graves follows:]

**AMENDMENT TO H.R. 4081**  
**OFFERED BY MR. GRAVES OF MISSOURI**

Strike all that follows after the enacting clause and  
insert the following:

**1 SECTION 1. SHORT TITLE.**

2       This Act may be cited as the “Contractor Oppor-  
3 tunity Protection Act of 2012”.

**4 SEC. 2. CONSOLIDATION OF PROVISIONS RELATING TO**  
**5 CONTRACT BUNDLING.**

6       Section 44 of the Small Business Act (15 U.S.C.  
7 657q) is amended to read as follows:

**8 “SEC. 44. CONTRACT BUNDLING.**

9       “(a) DEFINITIONS.—In this Act:

10       “(1) BUNDLED CONTRACT.—The term ‘bundled  
11 contract’—

12       “(A) means a contract that is entered into  
13 to meet procurement requirements that are  
14 combined in a bundling of contract require-  
15 ments, without regard to whether a study of the  
16 effects of the solicitation on Federal officers or  
17 employees has been made; and

18       “(B) does not include—

1 “(i) a contract with an aggregate dol-  
2 lar value below the dollar threshold; or

3 “(ii) a single award contract for the  
4 acquisition of a weapons system acquired  
5 through a major defense acquisition.

6 “(2) BUNDLING METHODOLOGY.—The term  
7 ‘bundling methodology’ means—

8 “(A) a solicitation to obtain offers for a  
9 single contract or a multiple award contract;

10 “(B) a solicitation of offers for the  
11 issuance of a task or a delivery order under an  
12 existing single or multiple award contract; or

13 “(C) the creation of any new procurement  
14 requirements that permits a combination of  
15 contract requirements, including any combina-  
16 tion of contract requirements or order require-  
17 ments.

18 “(3) BUNDLING OF CONTRACT REQUIRE-  
19 MENTS.—The term ‘bundling of contract require-  
20 ments’, with respect to the contract requirements of  
21 a Federal agency—

22 “(A) means the use of any bundling meth-  
23 odology to satisfy 2 or more procurement re-  
24 quirements for new or existing goods or services  
25 provided to or performed for the Federal agen-

1           cy, including any construction services, that is  
2           likely to be unsuitable for award to a small-  
3           business concern due to—

4                   “(i) the diversity, size, or specialized  
5                   nature of the elements of the performance  
6                   specified;

7                   “(ii) the aggregate dollar value of the  
8                   anticipated award;

9                   “(iii) the geographical dispersion of  
10                  the contract performance sites; or

11                  “(iv) any combination of the factors  
12                  described in clauses (i), (ii), and (iii); and

13                  “(B) does not include the use of a bun-  
14                  dling methodology for an anticipated award  
15                  with an aggregate dollar value below the dollar  
16                  threshold.

17           “(4) CHIEF ACQUISITION OFFICER.—The term  
18           ‘Chief Acquisition Officer’ means the employee of a  
19           Federal agency designated as the Chief Acquisition  
20           Officer for the Federal agency under section 16(a)  
21           of the Office of Federal Procurement Policy Act (41  
22           U.S.C. 1702(a)).

23           “(5) CONTRACT.—The term ‘contract’ includes,  
24           for purposes of this section, any task order made

1       pursuant to an indefinite quantity, indefinite deliv-  
2       ery contract.

3           “(6) CONTRACT BUNDLING.—The term ‘con-  
4       tract bundling’ means the process by which a bun-  
5       dled contract is created.

6           “(7) DOLLAR THRESHOLD.—The term ‘dollar  
7       threshold’ means—

8               “(A) in the case of a contract for construc-  
9               tion, \$5,000,000; and

10               “(B) in any other case, \$2,000,000.

11           “(8) MAJOR DEFENSE ACQUISITION PRO-  
12       GRAM.—The term ‘major defense acquisition pro-  
13       gram’ has the meaning given in section 2430(a) of  
14       title 10, United States Code.

15           “(9) PREVIOUSLY BUNDLED CONTRACT.—The  
16       term ‘previously bundled contract’ means a contract  
17       that is the successor to a contract that required a  
18       bundling analysis, contract for which any of the suc-  
19       cessor contract were designated as a consolidated  
20       contract or bundled contract in the Federal procure-  
21       ment database, or a contract for which the Adminis-  
22       trator designated the prior contract as a bundled  
23       contract.



1           “(10) PROCUREMENT ACTIVITY.—The term  
2           ‘procurement activity’ means the Federal agency or  
3           office thereof acquiring goods or services.

4           “(11) PROCUREMENT REQUIREMENT.—The  
5           term ‘procurement requirement’ means a determina-  
6           tion by an agency that a specified good or service is  
7           needed to satisfy the mission of the agency.

8           “(12) SENIOR PROCUREMENT EXECUTIVE.—  
9           The term ‘senior procurement executive’ means an  
10          official designated under section 16(e) of the Office  
11          of Federal Procurement Policy Act (41 U.S.C.  
12          1702(e)) as the senior procurement executive for a  
13          Federal agency.

14          “(b) POLICY.—The head of each Federal agency shall  
15          ensure that the decisions made by the Federal agency re-  
16          garding contract bundling are made with a view to pro-  
17          viding small business concerns with appropriate opportu-  
18          nities to participate as prime contractors and subcontractors  
19          in the procurements of the Federal agency.

20          “(c) CONTRACT BUNDLING.—

21                 “(1) PROPOSED PROCUREMENTS.—Paragraphs  
22                 (2) through (4) shall apply to to a proposed procure-  
23                 ment if the proposed procurement—

1 “(A) would adversely affect one or more  
2 small business concerns, including the potential  
3 loss of an existing contract;

4 “(B) includes, in its statement of work,  
5 goods or services—

6 “(i)(I) currently being performed by a  
7 small business; and

8 “(II) if the proposed procurement is  
9 in a quantity or estimated dollar value the  
10 magnitude of which renders small business  
11 prime contract participation unlikely; or

12 “(ii)(I) that are of a type that the Ad-  
13 ministrator through market research can  
14 demonstrate that two or more small busi-  
15 nesses are capable of performing; and

16 “(II) if the proposed procurement  
17 would be combined with other require-  
18 ments for goods and services;

19 “(C) is for construction and—

20 “(i) seeks to package or combine dis-  
21 crete construction projects; or

22 “(ii) the value of the goods or services  
23 subject to the contract exceeds the dollar  
24 threshold; or

1           “(D) is determined by the Administrator  
2           to have a solicitation that involves an unneces-  
3           sary or unjustified bundling of contract require-  
4           ments.

5           “(2) RESPONSIBILITY OF THE PROCUREMENT  
6           ACTIVITY.—At least 45 days prior to the issuance of  
7           a solicitation, the Procurement Activity shall notify  
8           and provide a copy of the proposed procurement to  
9           the procurement center representative assigned to  
10          the Procurement Activity. The 45-day notification  
11          process under this paragraph shall occur concu-  
12          rently with other processing steps required prior to  
13          issuance of the solicitation. The notice shall include  
14          a statement setting forth the proposed procurement  
15          strategy required by subsection (c), and—

16          “(A) explaining why the proposed acquisi-  
17          tion cannot be further divided into reasonably  
18          small lots or discrete tasks in order to permit  
19          offers by small business concerns;

20          “(B) listing, if applicable, the incumbent  
21          contractors disaggregated by and including  
22          names, addresses, and whether or not the con-  
23          tractor is a small business concern;

1           “(C) describing the industries that might  
2           be interested in bidding on the contract require-  
3           ments;

4           “(D) delineating the number of small busi-  
5           ness concerns listed in the industry categories  
6           that could be excluded from future bidding if  
7           the contract is a bundled contract, including  
8           any small business bidders that had bid on pre-  
9           vious procurement requirements that are in-  
10          cluded in the bundling of contract requirements;

11          “(E) delineating the number of existing  
12          small business concerns whose contracts will  
13          cease if the contract bundling proceeds;

14          “(F) explaining why the delivery schedules  
15          cannot be established on a realistic basis that  
16          will encourage small business participation to  
17          the extent consistent with the actual require-  
18          ments of the Government;

19          “(G) explaining why the proposed acquisi-  
20          tion cannot be offered so as to make small busi-  
21          ness participation likely;

22          “(H) explaining why construction cannot  
23          be procured as separate discrete projects; and

1           “(I) explaining why the agency has deter-  
2           mined that the bundled contract is necessary  
3           and justified.

4           “(3) PUBLICATION OF NOTICE STATEMENT.—  
5           Concurrently, the statement required in paragraph  
6           (2) shall be published in the Federal contracting op-  
7           portunities database.

8           “(4) RECOMPETITION OF A PREVIOUSLY BUN-  
9           DLED CONTRACT.—If the proposed procurement is a  
10          previously bundled contract, that is to be recompeted  
11          as a bundled contract, the Administrator shall deter-  
12          mine, with the assistance of the agency proposing  
13          the procurement—

14               “(A) the amount of savings and benefits  
15               (in accordance with subsection (d)) achieved  
16               under the bundling of contract requirements;

17               “(B) whether such savings and benefits  
18               will continue to be realized if the contract re-  
19               mains bundled, and whether such savings and  
20               benefits would be greater if the procurement re-  
21               quirements were divided into separate solicita-  
22               tions suitable for award to small business con-  
23               cerns;

24               “(C) the dollar value of subcontracts  
25               awarded to small business concerns under the

1 bundled contract, disaggregated by North  
2 American Industrial Classification System  
3 Code;

4 “(D) the percentage of subcontract dollars  
5 awarded to small businesses under the bundled  
6 contract, disaggregated by North American In-  
7 dustrial Classification System Code; and

8 “(E) the dollar amount and percentage of  
9 prime contract dollars awarded to small busi-  
10 nesses in the primary North American Indus-  
11 trial Classification System Code for that bun-  
12 dled contract during each of the two fiscal years  
13 preceding the award of the bundled contract  
14 and during each fiscal year of the performance  
15 of the bundled contract.

16 “(5) FAILURE TO PROVIDE NOTICE.—

17 “(A) NO NOTIFICATION RECEIVED.—If no  
18 notification of the proposed procurement or ac-  
19 companying statement is received, but the Ad-  
20 ministrator determines that the proposed pro-  
21 curement is a proposed procurement described  
22 in paragraph (1), then the Administrator shall  
23 require that such a statement of work be com-  
24 pleted by the Procurement Activity and sent to  
25 the procurement center representative and post-

1           pone the solicitation process for at least 10  
 2           days but not more than 45 days to allow the  
 3           Administrator to review the statement and  
 4           make recommendations as described in this sec-  
 5           tion before the procurement process is contin-  
 6           ued.

7           “(B) NO WORK CONTINUED.—If the Ad-  
 8           ministrator requires a Procurement Activity to  
 9           provide a statement of work pursuant to sub-  
 10          paragraph (A), the Procurement Activity shall  
 11          not be permitted to continue with the procure-  
 12          ment until such time as the Procurement Activ-  
 13          ity complies with the requirements of subpara-  
 14          graph (A).

15          “(6) RESPONSIBILITY OF THE PROCUREMENT  
 16          CENTER REPRESENTATIVE.—Within 15 days after  
 17          receipt of the proposed procurement and accom-  
 18          panying statement, if the procurement center rep-  
 19          resentative believes that the procurement as pro-  
 20          posed will render small business prime contract par-  
 21          ticipation unlikely, the representative shall rec-  
 22          ommend to the Procurement Activity alternative pro-  
 23          curement methods which would increase small busi-  
 24          ness prime contracting opportunities.

1           “(7) DISAGREEMENT BETWEEN THE ADMINIS-  
2           TRATOR AND THE PROCUREMENT ACTIVITY.—

3           “(A) IN GENERAL.—The Administrator  
4           may take action under this paragraph to fur-  
5           ther the interests of small businesses if—

6                   “(i) a small business concern would be  
7                   adversely affected, directly or indirectly, by  
8                   the proposed procurement, and that small  
9                   business concern or a trade association  
10                  representing such small business concern  
11                  so requests; or

12                  “(ii) if the Administrator determines  
13                  that a small business concern would be ad-  
14                  versely affected, directly or indirectly, by  
15                  the proposed procurement.

16           “(B) APPEAL TO AGENCY HEAD.—First,  
17           the proposed procurement shall be submitted  
18           for determination to the head of the contracting  
19           agency by the Administrator.

20           “(C) FAILURE TO AGREE.—Whenever the  
21           Administrator and the head of the contracting  
22           agency fail to agree—

23                   “(i) the Administrator, within ten  
24                   days after such decision, may file an ap-



1           peal with the appropriate agency board of  
2           contract appeals;

3           “(ii) the board shall provide the Ad-  
4           ministrators and the head of the con-  
5           tracting agency the opportunity to provide  
6           their views on the disputed contract, except  
7           that no oral testimony or oral argument  
8           shall be permitted;

9           “(iii) the board shall permit interested  
10          bidders to intervene; and

11          “(iv) the board shall render its deci-  
12          sion, which shall be final agency action for  
13          purposes of chapter 7 of title 5, United  
14          States Code, within 30 days after the ap-  
15          peal has been filed.

16          “(D) APPEAL BY AFFECTED SMALL BUSI-  
17          NESS CONCERN TO GAO.—If the Administrator  
18          takes no action pursuant to subparagraph (C),  
19          a small business concern that would be ad-  
20          versely affected, directly or indirectly, by the  
21          procurement as proposed, or a trade association  
22          that includes such a small business concern as  
23          a member, may file a protest with the Govern-  
24          ment Accountability Office. If the protest is  
25          filed by a trade association, the trade associa-

1           tion shall not be required to identify a specific  
2           member in connection with the protest.

3           “(d) MARKET RESEARCH.—

4           “(1) IN GENERAL.—Before proceeding with an  
5           acquisition strategy that could lead to bundled con-  
6           tracts, the head of an agency shall conduct market  
7           research to determine whether bundling of the re-  
8           quirements is necessary and justified.

9           “(2) FACTORS.—For purposes of subsection  
10          (c)(1), a bundled contract is necessary and justified  
11          if the bundling of contract requirements will result  
12          in substantial measurable benefits in excess of those  
13          benefits resulting from a procurement of the con-  
14          tract requirements that does not involve contract  
15          bundling.

16          “(3) BENEFITS.—For the purposes of bundling  
17          of contract requirements, benefits described in para-  
18          graph (2) may include the following:

19               “(A) Cost savings.

20               “(B) Quality improvements.

21               “(C) Reduction in acquisition cycle times.

22               “(D) Better terms and conditions.

23               “(E) Any other benefits.

24          “(4) REDUCTION OF COSTS NOT DETERMINA-  
25          TIVE.—For purposes of this subsection:

1           “(A) Cost savings shall not include any re-  
2           duction in the use of military interdepartmental  
3           purchase requests or any similar transfer funds  
4           among Federal agencies for the use of a con-  
5           tract issued by another Federal agency.

6           “(B) The reduction of administrative or  
7           personnel costs alone shall not be a justification  
8           for bundling of contract requirements unless  
9           the cost savings are expected to be substantial  
10          in relation to the dollar value of the procure-  
11          ment requirements to be bundled.

12          “(5) LIMITATION ON ACQUISITION STRATEGY.—  
13          The head of a Federal agency may not carry out an  
14          acquisition strategy that includes bundled contracts  
15          valued in excess of the dollar threshold, unless the  
16          senior procurement executive or, if applicable, Chief  
17          Acquisition Officer, for the Federal agency, certifies  
18          to the head of the Federal agency that steps will be  
19          taken to include small business concerns in the ac-  
20          quisition strategy prior to the implementation of  
21          such acquisition strategy.

22          “(e) STRATEGY SPECIFICATIONS.—If the head of a  
23          contracting agency determines that an acquisition plan or  
24          proposed procurement strategy will result in a bundled

1 contract, the proposed acquisition plan or procurement  
2 strategy shall—

3 “(1) identify specifically the benefits anticipated  
4 to be derived from the bundling of contract require-  
5 ments;

6 “(2) set forth an assessment of the specific im-  
7 pediments to participation by small business con-  
8 cerns as prime contractors that result from the con-  
9 tract bundling and specify actions designed to maxi-  
10 mize small business participation as subcontractors  
11 (including suppliers) at various tiers under the con-  
12 tract or contracts that are awarded to meet the re-  
13 quirements; and

14 “(3) include a specific determination that the  
15 anticipated measurable benefits of the proposed bun-  
16 dled contract justify its use.

17 “(f) CONTRACT TEAMING.—In the case of a solicita-  
18 tion of offers for a bundled contract that is issued by the  
19 head of an agency, a small-business concern may submit  
20 an offer that provides for use of a particular team of sub-  
21 contractors for the performance of the contract. The head  
22 of the agency shall evaluate the offer in the same manner  
23 as other offers, with due consideration to the capabilities  
24 of all of the proposed subcontractors. If a small business  
25 concern teams under this paragraph, it shall not affect

1 its status as a small business concern for any other pur-  
2 pose.

3 “(g) DATABASE, ANALYSIS, AND ANNUAL REPORT  
4 REGARDING CONTRACT BUNDLING.—

5 “(1) DATABASE.—Not later than 180 days  
6 after the date of the enactment of this subsection,  
7 the Administrator shall develop and shall thereafter  
8 maintain a database containing data and informa-  
9 tion regarding—

10 “(A) each bundled contract awarded by a  
11 Federal agency; and

12 “(B) each small business concern that has  
13 been displaced as a prime contractor as a result  
14 of the award of such a contract.

15 “(2) ANALYSIS.—For each bundled contract  
16 that is to be recompeted, the Administrator shall de-  
17 termine—

18 “(A) the amount of savings and benefits  
19 realized, in comparison with the savings and  
20 benefits anticipated by the analysis required  
21 under subsection (d) prior to the contract  
22 award; and

23 “(B) whether such savings and benefits  
24 will continue to be realized if the contract re-  
25 mains bundled, and whether such savings and

1 benefits would be greater if the procurement re-  
2 quirements were divided into separate solicita-  
3 tions suitable for award to small business con-  
4 cerns.

5 “(3) ANNUAL REPORT ON CONTRACT BUN-  
6 DLING.—

7 “(A) IN GENERAL.—Not later than 1 year  
8 after the date of the enactment of this para-  
9 graph, and annually in March thereafter, the  
10 Administrator shall transmit a report on con-  
11 tract bundling to the Committee on Small Busi-  
12 ness of the House of Representatives and the  
13 Committee on Small Business and Entrepre-  
14 neurship of the Senate.

15 “(B) CONTENTS.—Each report trans-  
16 mitted under subparagraph (A) shall include—

17 “(i) data on the number, arranged by  
18 industrial classification, of small business  
19 concerns displaced as prime contractors as  
20 a result of the award of bundled contracts  
21 by Federal agencies; and

22 “(ii) a description of the activities  
23 with respect to previously bundled con-  
24 tracts of each Federal agency during the  
25 preceding year, including—

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1 “(I) data on the number and  
2 total dollar amount of all contract re-  
3 quirements that were bundled; and

4 “(II) with respect to each bun-  
5 dled contract, data or information  
6 on—

7 “(aa) the justification for  
8 the bundling of contract require-  
9 ments;

10 “(bb) the cost savings real-  
11 ized by bundling the contract re-  
12 quirements over the life of the  
13 contract;

14 “(cc) the extent to which  
15 maintaining the bundled status  
16 of contract requirements is pro-  
17 jected to result in continued cost  
18 savings;

19 “(dd) the extent to which  
20 the bundling of contract require-  
21 ments complied with the con-  
22 tracting agency’s small business  
23 subcontracting plan, including  
24 the total dollar value awarded to  
25 small business concerns as sub-

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20

1 contractors and the total dollar  
 2 value previously awarded to small  
 3 business concerns as prime con-  
 4 tractors; and

5 “(ee) the impact of the bun-  
 6 dling of contract requirements on  
 7 small business concerns unable to  
 8 compete as prime contractors for  
 9 the consolidated requirements  
 10 and on the industries of such  
 11 small business concerns, includ-  
 12 ing a description of any changes  
 13 to the proportion of any such in-  
 14 dustry that is composed of small  
 15 business concerns.

16 “(h) BUNDLING ACCOUNTABILITY MEASURES.—

17 “(1) TEAMING REQUIREMENTS.—Each Federal  
 18 agency shall include in each solicitation for any mul-  
 19 tiple award contract above the dollar threshold a  
 20 provision soliciting bids from any responsible source,  
 21 including responsible small business concerns and  
 22 teams or joint ventures of small business concerns.

23 “(2) POLICIES ON REDUCTION OF CONTRACT  
 24 BUNDLING.—



1           “(A) IN GENERAL.—Not later than 270  
 2           days after the date of enactment of this sub-  
 3           paragraph, the Federal Acquisition Regulatory  
 4           Council, established under section 25(a) of the  
 5           Office of Federal Procurement Policy Act (41  
 6           U.S.C. 1302(a)), shall amend the Federal Ac-  
 7           quisition Regulation issued under section 25 of  
 8           such Act to—

9                   “(i) establish a Government-wide pol-  
 10                  icy regarding contract bundling;

11                  “(ii) establish a Government-wide pol-  
 12                  icy on the solicitation of contractor teams  
 13                  and joint ventures; and

14                  “(iii) require that the policies estab-  
 15                  lished under clauses (i) and (ii) be pub-  
 16                  lished on the website of each Federal agen-  
 17                  cy.

18           “(B) RATIONALE FOR CONTRACT BUN-  
 19           DLING.—Not later than 30 days after the date  
 20           on which the head of a Federal agency submits  
 21           the report required under section 15(h), the  
 22           head of the Federal agency shall publish on the  
 23           website of the Federal agency a list and ration-  
 24           ale for any bundled contract for which the Fed-

1           eral agency solicited bids or that was awarded  
2           by the Federal agency.”.

3   **SEC. 3. REPEAL OF REDUNDANT PROVISIONS.**

4       (a) CERTAIN PROVISIONS REGARDING CONTRACT  
5 BUNDLING REPEALED.—Section 15(a) of the Small Busi-  
6 ness Act (15 U.S.C. 644(a)), is amended by striking “If  
7 a proposed procurement includes” and all that follows  
8 through “the matter shall be submitted for determination  
9 to the Secretary or the head of the appropriate depart-  
10 ment or agency by the Administrator.”. All references in  
11 law to such sentences as they were in effect on the date  
12 that is 1 day prior to the effective date of this Act shall  
13 be deemed to be references to section 44(d), as added by  
14 this Act.

15       (b) CERTAIN PROVISIONS REGARDING MARKET RE-  
16 SEARCH REPEALED.—Paragraphs (2) through (4) of sec-  
17 tion 15(e) of the Small Business Act (15 U.S.C. 644(e))  
18 are repealed. All references in law to such paragraphs, as  
19 in effect on the date that is one day prior to the effective  
20 date of this Act, shall be deemed to be references to sub-  
21 sections (d) through (f), respectively, of section 44 of the  
22 Small Business Act, as added by this section.

23       (c) CERTAIN PROVISIONS REGARDING CONTRACT  
24 BUNDLING DATABASE REPEALED.—

1 (1) Paragraph (1) of section 15(p) of the Small  
2 Business Act (15 U.S.C. 644(p)) is repealed.

3 (2) Paragraphs (2) through (4) of section 15(p)  
4 of the Small Business Act (15 U.S.C 644(p)) are re-  
5 pealed. All references in law to such paragraphs, as  
6 in effect on the date that is one day prior to the ef-  
7 fective date of this Act, shall be deemed to be ref-  
8 erences to paragraphs (1) through (3), respectively,  
9 of section 44(h) of the Small Business Act, as added  
10 by this Act.

11 (d) CERTAIN PROVISIONS REGARDING BUNDLING  
12 ACCOUNTABILITY MEASURES REPEALED.—Paragraphs  
13 (1) and (2) of section 15(q) of the Small Business Act  
14 (15 U.S.C 644(q)) are repealed. All references in law to  
15 such paragraphs, as in effect on the date that is one day  
16 prior to the effective date of this Act, shall be deemed to  
17 be references to paragraphs (1) and (2), respectively, of  
18 section 44(i) of the Small Business Act, as added by this  
19 Act.

20 (e) CERTAIN PROVISIONS REGARDING.—Subsection  
21 (o) of section 3 of the Small Business Act (15 U.S.C.)  
22 is repealed.

23 **SEC. 4. TECHNICAL AMENDMENTS.**

24 Section 15 of the Small Business Act (15 U.S.C. 644)  
25 is amended—

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1 (1) in the subsection heading of subsection (p),  
2 to read as follows: “ACCESS TO DATA.”; and

3 (2) in the subsection heading of subsection (p),  
4 to read as follows: “REPORTS RELATED TO PRO-  
5 CUREMENT CENTER REPRESENTATIVES.”.

6 **SEC. 5. EXPANSION OF AGENCY’S RESPONSIBILITY.**

7 Section 44(b) of the Small Business Act (15 U.S.C.  
8 657q(b)) is amended by striking “appropriate” and insert-  
9 ing “the maximum practicable”.



Chairman GRAVES. And without objection the amendment is in the nature of a substitute. It shall be considered the base text for the purpose of the bill.

Does anyone wish to offer an amendment to that?

Seeing none, the question is on agreeing to H.R. 4081 as amended. All those in favor say aye.

[A chorus of ayes.]

Chairman GRAVES. All opposed no.

[No response]

Chairman GRAVES. In the opinion of the chair the ayes have it. H.R. 4081, as amended, is agreed to and without objection. A quorum being present, the bill is favorably reported to the House. And without objection the Committee staff is authorized to correct punctuation and make other necessary technical changes and conforming changes.

Our next bill for consideration is H.R. 4206, the "Contracting Oversight for Small Business Jobs Act of 2012," which is introduced by Mr. Coffman. And I now yield to Mr. Coffman to speak on 4206.

Mr. COFFMAN. Thank you, Mr. Chairman. I am very pleased that my legislation, H.R. 4206, the Oversight for Small Business Jobs Act of 2012, is being included in today's markup. Passage of this legislation will help small businesses comply with complicated size and contracting rules while provided a safe harbor provision for those small businesses which are making a good faith effort to comply with those rules.

The bill goes on to establish real penalties for instances of fraud, including suspension or even debarment from eligibility in these programs. Such actions will do a great deal to ensure that only those firms which are truly eligible are taking part in these programs.

H.R. 4206 also will raise fraud penalties so that the cost of litigation by the government no longer outweighs possible recovery, further increasing the likelihood that bad actors are identified, appropriately dealt with, and the programs can continue to provide valuable income streams to those small businesses which are truly eligible and will benefit.

I urge my fellow Committee Members to support H.R. 4206, the Oversight for Small Business Jobs Act of 2012.

Thank you, Mr. Chairman. I yield back the remainder of my time.

Chairman GRAVES. I recognize Ranking Member Velázquez for comments.

Ms. VELÁZQUEZ. I congratulate the gentlemen on this legislation. As we all know, and we witnessed the GAO report on HUBZones, this is the one program that really is being filled with fraud and mismanagement. And we all know that this year across the government, federal agencies are unknowingly victims of contracting fraud. Investigations conducted by the GAO, as well as the SBA's Inspector General and other agencies, have discovered businesses making false statements in order to obtain preferential contracts awards under SBA's small business contracting programs. This has included instances of fraud in the SBA's 8(a), HUBZone, and Serv-

ice-Disabled Veteran Programs, some of which were brought to light in testimony before this Committee.

These instances have become more brazen and not only steal money from honest small businesses, but also the taxpayers. Stopping this behavior and making sure that these individuals cannot do business with the government is vital. By increasing penalties for companies who knowingly misrepresent their status as a small business we are helping the small firms who play by the rules and who should be rightfully competing for these awards. Strengthening the consequences will make would-be fraudsters think twice about scamming the government. Maintaining the integrity of the procurement process is a priority, and through weeding out bad actors we can ensure that small businesses and the taxpayers are not taken advantage of.

And with that, I yield back, Mr. Chairman.

Chairman GRAVES. Does any other Member have a statement on H.R. 4206?

Seeing none, the Committee now moves to consideration of H.R. 4206.

Ms. VELÁZQUEZ. She had—

Chairman GRAVES. Oh, I am sorry.

Ms. HAHN. I have an amendment.

Chairman GRAVES. We have to open it up, so hang on. Clerk, will you please report the title of the bill?

The CLERK. H.R. 4206: To amend the Small Business Act to provide for increased penalties for contracting fraud and for other purposes.

Chairman GRAVES. Without objection H.R. 4206 is considered as read and open for amendment at any point.

[The bill H.R. 4206 follows:]



112TH CONGRESS  
2D SESSION

# H. R. 4206

To amend the Small Business Act to provide for increased penalties for contracting fraud, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 19, 2012

Mr. COFFMAN of Colorado (for himself and Mr. GRAVES of Missouri) introduced the following bill; which was referred to the Committee on Small Business, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To amend the Small Business Act to provide for increased penalties for contracting fraud, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

### 3 SECTION 1. SHORT TITLE.

4 This Act may be cited as the “Contracting Oversight  
5 for Small Business Jobs Act of 2012”.

1 **SEC. 2. INCREASED PENALTIES FOR FRAUD.**

2 (a) IN GENERAL.—Chapter 47 of title 18, United  
3 States Code, is amended by adding at the end the fol-  
4 lowing:

5 **“§ 1041. Misrepresentation of status as a small busi-**  
6 **ness concern**

7 “(a) IN GENERAL.—Whoever knowingly—

8 “(1) falsifies, conceals, or covers up by any  
9 trick, scheme, or device a material fact;

10 “(2) makes any materially false, fictitious, or  
11 fraudulent statement or representation; or

12 “(3) makes or uses any false writing or docu-  
13 ment, including electronically, knowing the same to  
14 contain any materially false, fictitious, or fraudulent  
15 statement or entry;

16 concerning status as a small business concern or compli-  
17 ance with the requirements of the Small Business Act in  
18 an effort to obtain, retain, or complete a federal govern-  
19 ment contract shall be fined \$1,000,000 or in a sum equal  
20 to twice the amount or value of goods or services under  
21 the contract or order, whichever is greater, imprisoned not  
22 more than 5 years, or both.”.

23 (b) TECHNICAL AMENDMENT.—The table of sections  
24 for such chapter is amended by inserting after the item  
25 relating to the following section:

“1041. Misrepresentation of status as a small business concern.”.



1 **SEC. 3. SAFE HARBOR FOR GOOD FAITH COMPLIANCE EF-**  
2 **FORTS.**

3 (a) SMALL BUSINESS FRAUD.—Section 16(d) of the  
4 Small Business Act (15 U.S.C. 16(d)) is amended by in-  
5 serting after paragraph (2) the following:

6 “(3) This subsection shall not apply to any con-  
7 duct in violation of subsection (a) if the defendant  
8 acted in reliance on a written advisory opinion from  
9 a licensed attorney who is not an employee of the de-  
10 fendant.”.

11 (b) MISREPRESENTATION OF STATUS.—Section 1041  
12 of title 18, United States Code, as added by section 2 of  
13 this Act, is amended by inserting after subsection (a) the  
14 following:

15 “(b) EXCEPTION.—This section shall not apply to  
16 any conduct in violation of paragraph (2) or (3) of sub-  
17 section (a) if the defendant acted in reliance on a written  
18 advisory opinion from a licensed attorney who is not an  
19 employee of the defendant.”.

20 (c) REGULATIONS.—Not later than 270 days after  
21 the date of enactment of this Act, the Administrator of  
22 the Small Business Administration shall issue rules defin-  
23 ing what constitutes an adequate advisory opinion for pur-  
24 poses of section 16(d)(3) of the Small Business Act.

25 (d) SMALL BUSINESS COMPLIANCE GUIDE.—Not  
26 later than 270 days after the date of enactment of this

1 Act, the Administrator of the Small Business Administra-  
2 tion shall issue (pursuant to section 212 of the Small  
3 Business Regulatory Enforcement Fairness Act of 1996)  
4 a compliance guide to assist business concerns in accu-  
5 rately determining their status as a small business con-  
6 cern.

7 **SEC. 4. OFFICE OF HEARINGS AND APPEALS.**

8 (a) CHIEF HEARING OFFICER.—Section 4(b)(1) of  
9 the Small Business Act is amended by adding at the end  
10 the following: “One shall be designated at the time of his  
11 or her appointment as the Chief Hearing Officer, who  
12 shall head and administer the Office of Hearings and Ap-  
13 peals within the Administration.”.

14 (b) OFFICE OF HEARINGS AND APPEALS ESTAB-  
15 LISHED IN ADMINISTRATION.—Section 5 of the Small  
16 Business Act (15 U.S.C. 634) is amended by adding at  
17 the end the following:

18 “(i) OFFICE OF HEARINGS AND APPEALS.—

19 “(1) IN GENERAL.—There is established in the  
20 Administration an Office of Hearings and Appeals—

21 “(A) to impartially decide such matters,  
22 where Congress designates that a hearing on  
23 the record is required or which the Adminis-  
24 trator designates by regulation or otherwise;  
25 and

1 “(B) which shall contain the Administra-  
2 tion’s Freedom of Information/Privacy Acts Of-  
3 fice.

4 “(2) CHIEF HEARING OFFICER.—The Chief  
5 Hearing Officer shall be a career member of the  
6 Senior Executive Service and an attorney duly li-  
7 censed by any State, commonwealth, territory, or the  
8 District of Columbia.

9 “(A) DUTIES.—The Chief Hearing Officer  
10 shall—

11 “(i) serve as the Chief Administrative  
12 Law Judge; and

13 “(ii) be responsible for the operation  
14 and management of the Office of Hearings  
15 and Appeals, pursuant to the rules of prac-  
16 tice established by the Administrator.

17 “(B) ALTERNATIVE DISPUTE RESOLU-  
18 TION.—The Chief Hearing Officer may also as-  
19 sign a matter for mediation or other means of  
20 alternative dispute resolution.

21 “(3) ADMINISTRATIVE LAW JUDGES.—

22 “(A) IN GENERAL.—An administrative law  
23 judge shall be an attorney duly licensed by any  
24 State, commonwealth, territory, or the District  
25 of Columbia.

1           “(B) CONDITIONS OF EMPLOYMENT.—(i)  
2           An administrative law judge shall serve in the  
3           excepted service as an employee of the Adminis-  
4           tration under section 2103 of title 5, United  
5           States Code, and under the supervision of the  
6           Chief Hearing Officer.

7           “(ii) Administrative law judge positions  
8           shall be classified at Senior Level, as such term  
9           is defined in section 5376 of title 5, United  
10          States Code.

11          “(iii) Compensation for administrative law  
12          judge positions shall be set in accordance with  
13          the pay rates of section 5376 of title 5, United  
14          States Code.

15          “(C) TREATMENT OF CURRENT PER-  
16          SONNEL.—An individual serving as a Judge in  
17          the Office of Hearings and Appeals (as that po-  
18          sition and office are designated in section  
19          134.101 of title 13, Code of Federal Regula-  
20          tions (as in effect on January 1, 2012)) on the  
21          effective date of this subsection shall be consid-  
22          ered as qualified to be and redesignated as ad-  
23          ministrative law judges.

24          “(D) POWERS.—An administrative law  
25          judge shall have the authority to conduct hear-

1           ings in accordance with sections 554, 556, and  
2           557 of title 5, United States Code.”.

3 **SEC. 5. REQUIREMENT FRAUDULENT BUSINESSES BE SUS-**  
4 **PENDED OR DEBARRED.**

5       (a) IN GENERAL.—Section 16(d)(2) of the Small  
6 Business Act (15 U.S.C. 645(d)(3)) is amended by strik-  
7 ing “on the basis that such misrepresentation indicates a  
8 lack of business integrity that seriously and directly af-  
9 fects the present responsibility to perform any contract  
10 awarded by the Federal Government or a subcontract  
11 under such a contract” and inserting “if the misrepresen-  
12 tation is established by a preponderance of the evidence  
13 (in the case of debarment) or adequate evidence (in the  
14 case of suspension)”.

15       (b) REVISION TO FAR.—Not later than 270 days  
16 after the date of enactment of this Act, the Federal Acqui-  
17 sition Regulation shall be revised to implement the amend-  
18 ment made by this section.

19       (c) PUBLICATION OF PROCEDURES REGARDING SUS-  
20 PENSION AND DEBARMENT.—Not later than 270 days  
21 after the date of enactment of this Act, the Administrator  
22 shall publish on the Administration’s Web site the stand-  
23 ard operating procedures for suspension and debarment  
24 in effect, and the name and contact information for the  
25 individual designated by the Administrator as the senior

1 individual responsible for suspension and debarment pro-  
2 ceedings.

3 (d) REQUIRED REGULATIONS.—Not later than 270  
4 days after the date of enactment of this Act, the Adminis-  
5 trator of the Small Business Administration shall issue  
6 regulations defining the term “adequate evidence” for pur-  
7 poses of section 16(d)(2) of the Small Business Act.

8 **SEC. 6. ANNUAL REPORT ON SUSPENSIONS AND**  
9 **DEBARMENTS PROPOSED BY SMALL BUSI-**  
10 **NESS ADMINISTRATION.**

11 (a) REPORT REQUIREMENT.—The Administrator of  
12 the Small Business Administration shall submit each year  
13 to the Committee on Small Business and Entrepreneur-  
14 ship of the Senate, and the Committee on Small Business  
15 of the House of Representatives a report on the suspen-  
16 sion and debarment actions taken by the Administrator  
17 during the year preceding the year of submission of the  
18 report.

19 (b) MATTERS COVERED.—The report required by  
20 subsection (a) shall include the following information for  
21 the year covered by the report:

22 (1) NUMBER.—The number of contractors pro-  
23 posed for suspension or debarment.

1           (2) SOURCE.—The office within a Federal  
2           agency that originated each proposal for suspension  
3           or debarment.

4           (3) REASONS.—The reason for each proposal  
5           for suspension or debarment.

6           (4) RESULTS.—The result of each proposal for  
7           suspension or debarment, and the reason for such  
8           result.

9           (5) REFERRALS.—The number of suspensions  
10          or debarments referred to the Inspector General of  
11          the Small Business Administration or another agen-  
12          cy, or to the Attorney General (for purposes of this  
13          paragraph, the Administrator may redact identifying  
14          information on names of companies or other infor-  
15          mation in order to protect the integrity of any ongo-  
16          ing criminal or civil investigation).

17 **SEC. 7. SENSE OF CONGRESS.**

18          It is the sense of Congress that the Administrator  
19          of the Small Business Administration should present to  
20          the Inspector General of the Administration or the Attor-  
21          ney General any evidence of a violation or potential viola-  
22          tion of section 1041, title 18, United States Code, or sec-  
23          tion 16(d) of the Small Business Act, presented in a pro-

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1 ceeding conducted by the Office of Hearings and Appeals

2 established in section 4 of this Act.

○



Chairman GRAVES. Does a Member wish to—or have an amendment? And I know now Ms. Hahn, you are ready. Would the clerk please report the amendment?

The CLERK. Amendment 1 to H.R. 4206 offered by Ms. Hahn of California.

Chairman GRAVES. Without objection the amendment is considered as read. The gentlelady has five minutes.

[Amendment 1 to H.R. 4206 offered by Ms. Hahn follows:]

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**AMENDMENT TO H.R. 4206**  
**OFFERED BY MS. HAHN OF CALIFORNIA**

Page 4, line 6, insert after the period the following:

“On the date that the Administrator issues the compliance guide under this section, the Administrator shall also issue a version of the compliance guide translated into Spanish.”.



Ms. HAHN. Thank you, Mr. Chairman, Ranking Member Velázquez, and thank you to Mr. Coffman for introducing this legislation. I think this is an important step towards ensuring that small businesses who are awarded government contracts are actually small businesses.

Just yesterday, this Committee held a hearing on entrepreneurship, where we learned, among other things, that immigrants were more than twice as likely to start businesses as non-immigrants, and that Latinos demonstrated the highest entrepreneurial activity in 2010, which is a good thing for this country. And given the importance of this bill and the surge in Latino business owners, it only makes sense to require that the SBA publish the Small Business Compliance Guide in Spanish as well as English. That is why I am offering my amendment to H.R. 4206, the “Contracting Oversight for Small Business Jobs Act of 2012,” which simply requires that all the regulations and guides the SBA will produce as a result of this act be made in Spanish.

Many of the bills we are marking up today aim to increase government contracts to small businesses and to help them succeed. My amendment is a simple way, a simple step to make sure that these new business owners can comply with the new rules and regulations.

Just before I came in here I ran into the California Hispanic Chamber of Commerce. They are walking the halls of Congress today and I am sure that they would agree with this simple step and would urge this Committee to accept my amendment. Thank you very much.

Chairman GRAVES. Does any other Member wish to be heard on the amendment?

Ms. HERRERA BEUTLER. Mr. Chairman.

Chairman GRAVES. Ms. Herrera Beutler.

Ms. HERRERA BEUTLER. I thank the Chairman and the gentlelady for offering the amendment. The only question I would have, I guess, is a question for the sponsor, if I can do that.

What would you say—and as the first Hispanic to represent Washington State in the federal government, this is an issue near and dear to my heart. What would you say then if there were other groups who come forward and ask for this in their language? I mean, I am wondering about the slippery slope.

Ms. HAHN. Well, the greatest slippery slope we could have in this country is more people starting their own businesses, expanding, hiring, and really turning this economy around. The only reason I introduced this specific language was because of what we heard in this Committee as Latinos having the highest entrepreneurial activity in 2010, and it certainly would be open to, you know, other languages as well.

I think anything we can do to empower folks in this country to succeed—

Ms. HERRERA BEUTLER. I would agree and I am reclaiming my time on that. I think the most important thing we can do is set up people who are coming here to obtain the American dream, set them up to succeed. And one of the ways that I found in my family is making sure that they are able just to start their business and serve customers, and one of the ways that they can do this is mak-

ing sure that they have the support that they need and obviously speaking and being able to communicate in different languages. Obviously they are not going to learn every language of somebody who walks into their door.

But I just—I would agree, the goal is to support them. And in considering this, that is how I am going to look at it, what is going to best set up any immigrant family who wants to come here and take hold of the American dream, what is going to set them up for success.

So with that, I yield back.

Mr. CICILLINE. Mr. Chairman.

Ms. VELÁZQUEZ. Would the gentlelady yield for a second?

Ms. HERRERA BEUTLER. I yield.

Ms. VELÁZQUEZ. Okay.

Mr. CICILLINE. Mr. Chairman.

Chairman GRAVES. Does any other Member wish to be heard on the amendment? Mr. Cicilline.

Mr. CICILLINE. Thank you, Mr. Chairman. I want to speak in strong support of the amendment and thank the gentlelady from California for raising this really important issue. And I come from a district where the Latino community has played a very important role in rebuilding the economy of Rhode Island. And I recently hosted the administrator of the Small Business Administration to Rhode Island, and she, too, spoke about nationally the entrepreneurial power and productivity of the Latino community.

And what I think in particular this bill, which involves the imposition of pretty serious penalties for noncompliance, that in this area in particular we should be sure that people are communicated with in a way that most effectively shares really vital information which has in it penalties of a million dollars.

And so I would say to the gentlelady that if there is another community, you know, next year or the following year that is present in the growing entrepreneurial sector of the economy, we ought to be prepared to be sure that that community has this information in their language as well. I think this is the beauty of Congress meeting regularly, we have the ability to respond emerging new communities and new languages, and it is one of the great strengths of our country. But I think it is indisputable that in this moment the Latino community is playing a very powerful and important and growing and significant role in the development of new businesses. And when we are about to enact a set of penalties for noncompliance with those, which are very severe, then I think we have to go the extra mile to be sure that they are getting that information effectively and, in this case, in their language. So I applaud the gentlelady from California for her visionary thinking in this matter.

I yield back the balance of my time.

Ms. HAHN. Well said.

Chairman GRAVES. Mr. Coffman.

Mr. COFFMAN. Mr. Chairman, government contracting is highly technical and requires a master of English. Nobody here is saying that these proposals are going to be submitted in other languages other than English. And so I think it is an unnecessary cost to

have it in a different language than what we are requiring the submission to be in.

I yield back, Mr. Chairman.

Ms. VELÁZQUEZ. Mr. Chairman? I rest in support of the gentlelady's amendment and I am even open to contemplate including other languages. You know, at a time when the economy continues to struggle and we know that immigrants are an important—they play an important role in our economy, we should do everything we can to open opportunities, the door of opportunity for immigrants entrepreneurs to participate in the federal marketplace. It is not only about knowing the penalties if they apply for an award where they do not qualify because of their size, but for them to understand what is needed in order to qualify as a small business concern.

Between 2002 and 2007, the number of Hispanic-owned businesses in the United States increased by 43.7 percent to 2.3 million, more than twice the national rate of 18 percent. Hispanic-owned businesses, for example, generated \$345.2 billion in sales in 2007, up 55.5 percent compared with 2005. And this over trend in Hispanic-owned businesses is likely to continue as the Census Bureau reported that the U.S. Hispanic population surged 43 percent, rising to 50.5 million in 2010 from 35 million. Furthermore, an estimated 45 million of this demographic speak Spanish.

And I will ask the gentlelady who spoke before that maybe we could work together to make sure the resources are included when we are reauthorized ESL programs, so that the resources are there for those who want to learn English, and believe me, they do. But resources are not there for them to be able to have the English language classes that they need.

As the Hispanic population continues to grow, this amendment will ensure that Hispanic-owned businesses have the information necessary to determine whether or not they qualify.

And with that, I yield back.

Chairman GRAVES. Ms. Ellmers.

Ms. ELLMERS. I have a question, and it is very simple. Is there a cost associated with this? And do we know that number? And I guess it would be to the gentlelady who has put forward the amendment.

Ms. HAHN. Thank you. I, at this time, do not have a cost estimate of what this would require, but, you know, again, I think this is an important step that we can take to let entrepreneurs, let small business folks out there in this country know that we are on their side. And, again, what we are enacting today could cost penalties up to a million dollars for some of these small business owners, which I am sure they would argue is not something that would be welcome at a time when they are trying to get started. So we want them to be in compliance.

And, you know, current law is vague on what documents must be made available in a language other than English and what constitutes a vital document. So I just think that this ensures that our policy matches the facts.

And I think what we want to do in this Committee is, again, be on the side of small businesses. We want to empower them. We want to make sure that they are in compliance with Federal Gov-

ernment regulations. And so I think this is an important amendment and it is a simple one.

Ms. ELLMERS. I want to reclaim the time.

Chairman GRAVES. Reclaim your time.

Ms. ELLMERS. I just want to comment then that we do not know the cost associated with this, and I think that is something that we need to consider. Thank you.

Chairman GRAVES. Yes. Mr. Hanna.

Ms. VELÁZQUEZ. We have passed legislation before where the Chairman said that he did not do the study.

Chairman GRAVES. Mr. Hanna.

Mr. HANNA. If I could ask the gentlelady, Ms. Hahn, why is not the overwhelming success of the Hispanic community's growth evidence that this is not necessary?

Ms. HAHN. Well, again, this is because we are enacting a new law here, so it has nothing to do with previously whether or not Latinos have shown that great American entrepreneurial passion. This is that we are enacting a new law that could impact them, and I think it is only fair and right that we—

Mr. HANNA. Well, what I am suggesting—

Ms. HAHN [continuing]. Translate this in their own language.

Mr. HANNA. I appreciate that, but what I am suggesting is that that is actually evidence to the contrary, that people are quite capable of managing within the rules that we have. Clearly there is a lot to be read, a lot to be done, a lot to be studied, and it is obviously going well. I guess your point would be that they would do even better maybe.

Ms. HAHN. Well, I just think it is the right thing to do when we enact a law like this to have it published in Spanish. I come from California.

Mr. HANNA. Sure.

Ms. HAHN. We do this all the time, so it is interesting I have this debate where others do not agree with this. This is like second nature for us, particularly in Los Angeles.

Mr. HANNA. Yes, ma'am. Thank you. I yield back.

Chairman GRAVES. Mr. West.

Mr. WEST. Thank you, Mr. Chairman. And I would like to ask the gentlelady from California, do we have the technical manuals for a C-17 aircraft in other languages than English?

Ms. HAHN. I do not know the answer to that.

Mr. WEST. I can tell you no. Do you have the technical manuals for an F-15/F-16 aircraft or, you know, helicopters in other languages than English?

Ms. HAHN. Well, you know, I do not really see this as being along the same subject.

Mr. WEST. I do because this is the point. If you are a crew chief on these aircraft, you are responsible for that aircraft, if that aircraft were to crash we are talking about multimillions of dollars in penalties. So if we are not producing, you know, technical manuals for the Federal Government, United States military, in languages other than English, then why do we need to produce this in a language other than English?

So I think that the precedent is established. We have one language that we operate in, the Federal Government, and that is

English. And what the state of California wants to do, that is fine. I can tell you in the state of Florida, in South Florida, that election ballots are printed in three different languages and that is Spanish, Creole, and English. That is something they do in South Florida that the Federal Government has not mandated. So I do not think that this should be mandated from this Committee or as part of this legislation, so I will be voting no on this amendment.

Ms. HAHN. And I just want to, if I may, reply that, again, this is not military contracts we are talking about here. This is small business contracts and—

Mr. WEST. They are.

Ms. HAHN. Well, I mean, this is, you know, we are talking about a document here that we are considering a vital document. And according to our policy a vital document can be translated in another language.

Chairman GRAVES. Mr. Chabot.

Mr. CHABOT. Thank you, Mr. Chairman. I would just start off by noting to the gentlelady that some of the resistance that you are hearing here from our side, I think we want to be welcoming to those folks that are here legally in this country. And I know the folks in California are oftentimes trendsetters and the rest of us sometimes follow along, but the business of this country is generally conducted in English and that has been accepted for a long time. Many of us here favor English as the official language of our country and I happen to favor that as well.

We also think that it is in the best interest of groups as quickly as possible to learn the language of this country, to learn English, and they will be far better off, whether it is in the schools or whether it is in the business community or other. Many of us believe that you are unfortunately holding folks back by having exceptions in different languages. They are much better off in the long term, and I think there are a number of studies that show this, if they learn the language now and operate in that language. And I think that this particular amendment is in opposition of that.

So I think that is what you are hearing, at least some of the resistance on this side. We think people are much better off learning the language of this country and they will be much further ahead much more quickly if they do that.

I yield back.

Ms. HAHN. Mr. Chair.

Mr. SCHRADER. I move the previous question.

Ms. HAHN. Mr. Chair.

Chairman GRAVES. The previous question has been moved, but, you know—

Ms. HAHN. This is such an interesting debate.

Chairman GRAVES. It is. The thing is we are running out of time and we have one more bill to do, but I do not want to cut anybody off. I want anybody to be able to speak that wants to speak, but we are running out of time. We got Ms. Chu, we got Ms. Clarke, and we got Mr. Bartlett.

Ms. Chu, if you can, please.

Ms. CHU. I would like to yield to the gentleman from Rhode Island, Mr. Cicilline.

Mr. CICILLINE. I thank the gentlelady. I just want to say that I think it is important in this discussion to recognize that by suggesting that this amendment, which would require that this information be provided to people in Spanish, does not mean every document, including airplane manuals or every ballot. We are talking about in particular how we help small businesses.

And it is irrefutable when you look at the evidence the role that new immigrants play in the start up of new businesses, the role that new residents to our country play in beginning and growing jobs as a part of creating new businesses. There is a special role that new immigrants or immigrants to this country often who do not speak English, particularly who speak Spanish, are playing in job creation. And so it is very different than—of course, I think everyone would agree it is easier if you move to a country when you learn that language and you are able to integrate fully with the language of that country. Of course, that is everyone's hope and that will certainly be true.

But what we are really asking is what is best for our country in these early years? And if there is someone who speaks Spanish and they are going to start a new business or grow a business, being sure that they have information which includes a very serious penalty makes sense. And, you know, to suggest that by doing that we are arguing that every plane manual or every ballot also has to be in Spanish, that is not the argument.

This is a population that is starting new businesses. If you look at the statistics of what is the percentage of new business in this country that are being started, particularly in urban areas, by new immigrants, that people have been here less than a couple of years, it is staggering. It is the engine of the small business economy in this country. And to suggest somehow we should not do everything we can to share information with that community in their own language that has very serious penalties I think fundamentally ignores reality, the reality of the Latino presence in the small business economy of this country.

And I urge people to separate out this notion that we cannot do it in this one area without doing it everywhere in government for every group. We have the ability to discern situations one from the other, and I think this one makes good common sense not only for the community that we are reaching here that speaks Spanish, but for all of us who benefit from the growth of jobs in these new businesses, in Latino businesses all across this country.

And with that, I yield back the balance of my time.

Chairman GRAVES. All right. Yield back to Bartlett.

Mr. BARTLETT. Thank you. I am really conflicted on this amendment. I have been a very long-time supporter of English first. It is the language of commerce in our country. If you do not ultimately learn English, you will be relegated generally to entry-level kinds of jobs. And so I think that it is essential that we encourage people to learn English. But English first does not mean English only.

Ms. HAHN. That is right.

Mr. BARTLETT. And I would be more supportive of this amendment if it said that we would provide in digital form for downloading a Spanish translation, so that those who needed it could get it. I understand the concern of many of those.



Ms. HAHN. All right, I like that.

Mr. BARTLETT. Okay. Well, if I could make a friendly——

Ms. HAHN. That is friendly.

Mr. BARTLETT [continuing]. Perfecting amendment to your amendment, I would suggest that we provide this in digital form for downloading. I think that does away with almost all the objections on our side.

Ms. HAHN. I love it. I will accept that friendly amendment.

Mr. BARTLETT. If we could do that, I think that would help to advance this.

Ms. HAHN. So moved.

Chairman GRAVES. We are going to have to have that in writing.

Mr. COFFMAN. Mr. Chairman, may I offer an amendment to that?

Chairman GRAVES. No, because that would be in the third degree, but we are going to have to have it writing to be able to do it, so we are going to have to recess to be able to do that.

Mr. BARTLETT. Mr. Chairman, I wonder if we could agree that before this goes to the floor that we will work to improve this so that she might not withdraw her amendment with the——

Chairman GRAVES. I am not going to support the amendment. So we can—I mean, I would love to support the gentlelady, but I cannot support this amendment.

Ms. HAHN. Even if downloaded?

Mr. BARTLETT. Can we simply move to the last one and they can work this while we are doing the last bill and then we come back?

Ms. VELÁZQUEZ. Maybe we should move to the next bill and let them work on which of that amendment.

Ms. HAHN. Thank you.

Mr. BARTLETT. Being in writing can be in handwriting, can it not?

Ms. VELÁZQUEZ. Yes.

Chairman GRAVES. Yes.

Mr. BARTLETT. Okay. Thank you and I yield back.

Chairman GRAVES. Pursuant to Rule 10 of the Committee——

Ms. CLARKE. Mr. Chairman.

Chairman GRAVES. Ms. Clarke, you want to be heard on the amendment?

Ms. CLARKE. Yes, I would and thank you, sir. I just wanted to add my voice. My colleague, Mr. Hanna, raised a question about the fact that we recognize that so many Hispanic businesses already exist and are already being successful, but what is implied in there is that all of these businesses are doing business with the SBA. That is not accurate.

What we are trying to do is encourage these businesses to grow and many of them are mom-and-pop establishments as most small businesses start out. Once these businesses have reached a certain size they are often seeking ways to grow. And during that interim period, these are immigrants who are learning English. I think there is a misrepresentation here that people are not multitasking. I think the very first thing that immigrants who speak another language try to do is, particularly when they want to go into business, is to begin learning the English language as best they can.

The challenge is interpreting information, and there is oftentimes not a direct translation of how to do business with the U.S.

Government. What this amendment would do is clarify and remove the barriers to the understandings and the complexities of doing business with the Federal Government, which I believe would certainly help these businesses to expand and to become employers of many Americans across the Nation. I think this is a small price to pay when you look at the success of these businesses; that is, to provide a way for them to interpret our laws and keeping with the language that is their first language while, at the same time, learning the native language of this Nation which has been English and helping them, therefore, to move forward.

So I just wanted to correct an assumption that was sort of built into your statement, Mr. Hanna. Many of these businesses already operate. They have just never done business with the government. And this is a way of building a bridge to their access to the programs that we know will help them to expand and become employers in our Nation.

With that, I yield back. Thank you, Mr. Chairman.

Ms. HAHN. Well said.

Mr. HANNA. I will withdraw my perfecting amendment.

Chairman GRAVES. Does any other Member wish to be heard on the amendment? Any other Member wish to be heard on the amendment?

With that, I want to kind of—

Mr. CICILLINE. I would like to offer that perfecting amendment in substitution, if I may, Mr. Chairman. I think it is an excellent suggestion that the sponsor—

Chairman GRAVES. We need it in writing.

Mr. CICILLINE. Pardon me?

Chairman GRAVES. We need it in writing.

Ms. CLARKE. We need it in writing. Can we download it?

Chairman GRAVES. In English.

Ms. CLARKE. In English.

Chairman GRAVES. Does any other Member wish to be heard on the amendment? And then we are going to postpone proceedings.

Ms. CLARKE. Mr. Chairman, can we handwrite?

Ms. VELÁZQUEZ. Yes.

Chairman GRAVES. Yes, you can handwrite it.

Ms. CLARKE. Okay.

Chairman GRAVES. What we will do, pursuant to Rule 10 of the Committee's rules, proceedings on the amendment will be postponed. And we are going to come right back to it just as soon as we do the next bill, which is H.R. 4203, the "Women's Procurement Act of 2012," which is introduced by Ranking Member Velázquez. I now recognize Ms. Velázquez for her opening remarks.

Ms. VELÁZQUEZ. Thank you, Mr. Chairman. The federal government has a 5 percent procurement goal for women-owned businesses, established in 1994, that has never been achieved. In fact, last year, the government missed the goal by more than 20 percent. As a result, one of the primary obstacles facing women-owned businesses over the last 10 years has been the government's failure to implement the Women's Procurement Program. Last year, that obstacle was finally removed as the final regulations for the Women's Procurement Program were released and the program was implemented.

Through this program women-owned small businesses are now eligible for contracts through restricted competition in 83 industries that have historically had underutilization of women-owned businesses. However, the program is far from perfect. While parity among small businesses contracting programs was achieved two years ago, the women's procurement still lags behind. Simply put, contracting offices do not have the options under the Women's Procurement Program that they do under the HUBZone, 8(a), and Service-Disabled Veterans initiatives. To address these issues and maintain parity the bills gave federal agencies new tools to award contracts to women-owned businesses similar to those that already exist for the 8(a), HUBZone, and Service-Disabled Veterans Program.

For restricted competitions, they will remove the existing caps on contracts eligible for set-aside, putting the program on par with other small businesses' contracting programs. Together these changes support efforts to maintain parity among all SBA contracting programs while giving contracting officers another tool to make awards to these types of companies.

There is another key problem that is holding back the program. The statutes call for businesses to certify their eligibility for the program and for these certifications to be verified by either agency contracting officers or third parties. What has happened is that the agency procurement officers have now become the de facto certifiers, a tedious and exacting role that is causing delays in the program's roll-out. These procurement officers should not be verifying certifications. Instead, they should be working with small businesses to award them contracts.

Making matters worse, the SBA requested inadequate resources to support these certifications, making the document repository, eligibility examinations, and protest process nearly unworkable. To address these issues the legislation charges SBA with the responsibility of certifying participants. If SBA is unable to do so, SBA may continue to approve third-party certifiers to carry out such responsibility.

The truth of the matter is that this is SBA's responsibility and they need to step up to the plate and certify women-owned businesses for this program to succeed. Frankly, I think we are growing tired of the agency's excuses that it is someone else's job to certify eligibility for the agency's very own programs.

Strengthening the Women's Procurement Program is critical to the 7.8 million women-owned businesses in the United States. Making up nearly 30 percent of all businesses across the country and generating \$1.2 trillion in revenue, they are a fast-growing sector of the economy. Ensuring that they have access to compete for government contracts is essential for their continued growth, and I urge a yes vote on this legislation.

And I yield back the balance of my time.

Chairman GRAVES. Are there any other Members who wish to be recognized for a statement on ranking member's H.R. 4203?

Seeing none, I support H.R. 4203. In our last markup I said that I did not want to pick winners and losers, but rather ensure that all small businesses have the opportunity to compete for contracts.

Standardizing the various small business programs to the extent possible helps meet that objective.

And I particularly support removing the caps on competitive contracts. If we believe in the market, why would we say that when multiple firms are competing we need to cap the size of the award? I think competition will keep the price reasonable, and the contracting officer is required to certify that the price that government is paying is fair and reasonable. I do urge the Committee to support the bill.

The Committee now moves to consideration of H.R. 4203. Clerk, please report the title.

The CLERK. H.R. 4203: To amend the Small Business Act with respect to the procurement program for women-owned small business concerns and for other purposes.

Chairman GRAVES. Without objection H.R. 4203 is considered as read and open for amendment.

[The bill H.R. 4203 follows:]



112TH CONGRESS  
2D SESSION

# H. R. 4203

To amend the Small Business Act with respect to the procurement program for women-owned small business concerns, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 19, 2012

Ms. VELÁZQUEZ (for herself, Ms. CLARKE of New York, Ms. CHU, and Ms. HAHN) introduced the following bill; which was referred to the Committee on Small Business

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## A BILL

To amend the Small Business Act with respect to the procurement program for women-owned small business concerns, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

### 3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Women’s Procurement  
5 Program Improvement Act of 2012”.

### 6 **SEC. 2. PROCUREMENT PROGRAM FOR WOMEN-OWNED** 7 **SMALL BUSINESS CONCERNS.**

8 Section 8(m) of the Small Business Act (15 U.S.C.  
9 637(m)) is amended—

- 1 (1) in paragraph (2)—  
2 (A) by striking subparagraph (D);  
3 (B) by redesignating subparagraph (E) as  
4 subparagraph (D) respectively; and  
5 (C) by striking subparagraph (F), and in-  
6 serting the following:  
7 “(E) each of the concerns—  
8 “(i) is certified by a Federal agency,  
9 a State government, or a national certi-  
10 fying entity approved by the Adminis-  
11 trator, as a small business concern owned  
12 and controlled by women; or  
13 “(ii) is certified by the Administrator  
14 as a small business concern owned and  
15 controlled by women.”;  
16 (2) in paragraph (3), by striking “subpara-  
17 graph (2)(A)” inserting the following: “paragraph  
18 (2)(A) or paragraph (7)(A)”;  
19 (3) in paragraph (5) by striking “under para-  
20 graph (2)(F)” each place it appears and inserting  
21 “under paragraph (2)(E)”;  
22 (4) by adding at the end the following:  
23 “(7) SOLE SOURCE CONTRACTS FOR ECONOMI-  
24 CALLY DISADVANTAGED WOMEN-OWNED SMALL  
25 BUSINESSES.—In accordance with this section, a

1 contracting officer may award a sole source contract  
2 to any small business concern meeting the require-  
3 ments of section 8(m)(2)(A) of this Act if—

4 “(A) such concern is determined to be a  
5 responsible contract with respect to perform-  
6 ance of such contract opportunity and the con-  
7 tracting officer does not have a reasonable ex-  
8 pectation that 2 or more businesses meeting the  
9 requirements of section 8(m)(2)(A) will submit  
10 offers;

11 “(B) the anticipated award price of the  
12 contract (including options) will not exceed—

13 “(i) \$6,500,000 in the case of a con-  
14 tract opportunity assigned a standard in-  
15 dustrial code for manufacturing; or

16 “(ii) \$4,000,000 in the case of any  
17 other contract opportunity; and

18 “(C) in the estimation of the contracting  
19 officer, the contract award can be made at a  
20 fair and reasonable price.

21 “(8) SOLE SOURCE CONTRACTS FOR WOMEN-  
22 OWNED SMALL BUSINESSES IN SUBSTANTIALLY  
23 UNDERREPRESENTED INDUSTRIES.—In accordance  
24 with this section, a contracting officer may award a  
25 sole source contract to any small business concerns

1 meeting the requirements of section 8(m)(3) of this  
2 Act if—

3 “(A) such concern is determined to be a  
4 responsible contract with respect to perform-  
5 ance of such contract opportunity and the con-  
6 tracting officer does not have a reasonable ex-  
7 pectation that 2 or more businesses meeting the  
8 requirements of section 8(m)(3) will submit of-  
9 fers;

10 “(B) the anticipated award price of the  
11 contract (including options) will not exceed—

12 “(i) \$6,500,000 in the case of a con-  
13 tract opportunity assigned a standard in-  
14 dustrial code for manufacturing; or

15 “(ii) \$4,000,000 in the case of any  
16 other contract opportunity; and

17 “(C) in the estimation of the contracting  
18 officer, the contract award can be made at a  
19 fair and reasonable price.”.

○



Chairman GRAVES. Does any Member have an amendment?  
Seeing none, the question is on agreeing to H.R. 4203. All those in favor say aye.

[A chorus of ayes.]

Chairman GRAVES. All opposed no.

[No response.]

Chairman GRAVES. The opinion of the chair is the ayes have it. The ayes do have it. H.R. 4203 is agreed to without objection. A quorum being present, the bill is favorably reported to the House. And without objection the Committee staff is authorized to correct punctuation and make other necessary technical changes.

COUNSEL. We are still waiting on the copies.

Chairman GRAVES. All right, we are waiting on the copies.

The Committee previously postponed action on H.R. 4206. Just as soon as we have the copies we will move forward. How long is it going to take?

COUNSEL. Two minutes.

Chairman GRAVES. The Committee previously postponed action on H.R. 4206. Without objection we will now resume these discussions.

Does the gentleman wish to offer a perfecting amendment? The amendment is being distributed. The clerk will report the amendment to the amendment.

The CLERK. Amendment offered by Mr. Cicilline of Rhode Island, Perfecting Amendment 1 to H.R. 4206 offered by Ms. Hahn of California.

Chairman GRAVES. With that, does any other Member wish to be heard on the amendment to the amendment?

Ms. HAHN. Yes, I just want to say again, as we are really working to protect and support job creators, that was really the intention of this amendment. And I think having it available to be downloaded really gets rid of the idea that it will cost more in the long run.

Chairman GRAVES. Any other Member wish to be heard on the amendment to the amendment? Ms. Clarke?

Ms. CLARKE. Thank you, Mr. Graves. I just wanted to, again, share with my colleagues my support for this amendment and its perfecting amendment. I think that we have come to a great compromise here.

There are hosts of small businesses that are growing across our Nation that really rely on us to be helpful to them. I know of the concerns of my colleagues on the other side of the aisle. It is my hope that this perfecting amendment which provides this online will ease any concerns that our colleagues would have.

Again, it has been my experience that most immigrants really desire to learn the English language, particularly those who are involved in commerce. They want to be able to pitch their services, their products, and their wares to every American, and they recognize that anything that is a barrier to that is a barrier to their success.

So my support for this amendment is a bridge-building amendment that enables those who would like to use the services of the federal government to expand their businesses, to become employers to all Americans, to have this translation available that enables

them to accurately understand what is required by the SBA of them to strengthen, build, and to further their pursuits of the American dream.

With that, Mr. Chairman, I yield back.

Chairman GRAVES. Does any other Member wish to be heard on the amendment to the amendment?

We are going to have votes in five minutes. Does any other Member wish to be heard on the amendment to the amendment?

Seeing none, I am going to oppose both. I do not support the underlying amendment. I am not going to support the amendment to the amendment.

I believe translating the compliance guidelines into another language is just going to be money that is going to be spent without actual benefit. This is 10th government contracting bill we have marked up and the last 9 have shown us, if anything, that government contracting is a very technical area. And I am going to back up what Mr. Coffman said earlier. In dealing with something technical the choice of words matter and a common language allows us to use words with precision. And in the case of compliance guidelines that precision is especially important because it is a legal document.

The underlying documents themselves are only available in English. The Federal Acquisition Regulations is over 2,000 pages of regulation that all government contractors need to understand. It is only available in English. Solicitations are only available in English. Government contracts themselves are only available in English. And I think the amendment actually does very little to help small businesses and it is going to add to the cost.

Therefore, I am opposing the amendment to the amendment and the underlying amendment. And with that, the question is on the amendment offered by Mr. Cicilline to the amendment. All those in favor say aye.

[A chorus of ayes.]

Chairman GRAVES. All opposed no.

[A chorus of noes.]

Ms. HAHN. Mr. Chairman, can we have a recorded vote?

Chairman GRAVES. A recorded vote has been requested. Clerk, please call the roll.

The CLERK. Chairman Graves.

Chairman GRAVES. No.

The CLERK. Chairman Graves votes no.

Mr. Bartlett.

Mr. BARTLETT. Yes.

The CLERK. Mr. Bartlett votes aye.

Mr. Chabot.

Mr. CHABOT. No.

The CLERK. Mr. Chabot votes no.

Mr. King.

[No response.]

The CLERK. Mr. King.

[No response.]

The CLERK. Mr. Coffman.

Mr. COFFMAN. No.

The CLERK. Mr. Coffman votes no.

Mr. Mulvaney.  
 Mr. MULVANEY. No.  
 The CLERK. Mr. Mulvaney votes no.  
 Mr. Tipton.  
 Mr. TIPTON. Aye.  
 The CLERK. Mr. Tipton votes aye.  
 Mr. Landry.  
 [No response.]  
 The CLERK. Mr. Landry.  
 [No response.]  
 The CLERK. Ms. Herrera Beutler.  
 Ms. HERRERA BEUTLER. No.  
 The CLERK. Ms. Herrera Beutler votes no.  
 Mr. West.  
 Mr. WEST. No.  
 The CLERK. Mr. West votes no.  
 Mrs. Ellmers.  
 Ms. ELLMERS. No.  
 The CLERK. Mrs. Ellmers votes no.  
 Mr. Walsh.  
 Mr. WALSH. No.  
 The CLERK. Mr. Walsh votes no.  
 Mr. Barletta.  
 Mr. BARLETTA. No.  
 The CLERK. Mr. Barletta votes no.  
 Mr. Hanna.  
 Mr. HANNA. Yes.  
 The CLERK. Mr. Hanna votes aye.  
 Mr. Schilling.  
 Mr. SCHILLING. Yes.  
 The CLERK. Mr. Schilling votes aye.  
 Ranking Member Velázquez.  
 Ms. VELÁZQUEZ. Yes.  
 The CLERK. Ranking Member Velázquez votes aye.  
 Mr. Schrader.  
 Mr. SCHRADER. Aye.  
 The CLERK. Mr. Schrader votes aye.  
 Mr. Critz.  
 Mr. CRITZ. Aye.  
 The CLERK. Mr. Critz votes aye.  
 Ms. Chu—I am sorry, Ms. Clarke.  
 Ms. CLARKE. Aye.  
 The CLERK. Ms. Clarke votes aye.  
 Ms. Chu.  
 Ms. CHU. Aye.  
 The CLERK. Ms. Chu votes aye.  
 Mr. Cicilline.  
 Mr. CICILLINE. Aye.  
 The CLERK. Mr. Cicilline votes aye.  
 Mr. Richmond.  
 [No response.]  
 The CLERK. Mr. Richmond.  
 [No response.]  
 The CLERK. Ms. Hahn.

Ms. HAHN. Aye.  
 The CLERK. Ms. Hahn votes aye.  
 Mr. Peters.  
 Mr. PETERS. Aye.  
 The CLERK. Mr. Peters votes aye.  
 Mr. Owens.  
 Mr. OWENS. Aye.  
 The CLERK. Mr. Owens votes aye.  
 Mr. Keating.  
 Mr. KEATING. Yes.  
 The CLERK. Mr. Keating votes aye.  
 Chairman GRAVES. Does any other Member wish to vote? Any Member wish to change their vote?  
 The CLERK. Fourteen ayes, nine noes.  
 Chairman GRAVES. On this vote the ayes are 14, the noes are 9. The amendment to the amendment is agreed to.  
 The question is now on the underlying amendment by Ms. Hahn. All those in favor say aye.  
 [A chorus of ayes.]  
 Chairman GRAVES. All opposed no.  
 [A chorus of noes.]  
 Chairman GRAVES. In the opinion of the chair the noes have it.  
 Ms. HAHN. Could we have a recorded vote on that as well?  
 Chairman GRAVES. A recorded vote has been requested. Will the clerk please call the roll?  
 The CLERK. Chairman Graves.  
 Chairman GRAVES. No.  
 The CLERK. Chairman Graves votes no.  
 Mr. Bartlett.  
 Mr. BARTLETT. Aye.  
 The CLERK. Mr. Bartlett votes aye.  
 Mr. Chabot.  
 Mr. CHABOT. No.  
 The CLERK. Mr. Chabot votes no.  
 Mr. King.  
 [No response.]  
 The CLERK. Mr. King.  
 [No response.]  
 The CLERK. Mr. Coffman.  
 Mr. COFFMAN. No.  
 The CLERK. Mr. Coffman votes no.  
 Mr. Mulvaney.  
 Mr. MULVANEY. No.  
 The CLERK. Mr. Mulvaney votes no.  
 Mr. Tipton.  
 Mr. TIPTON. Aye.  
 The CLERK. Mr. Tipton votes aye.  
 Mr. Landry.  
 [No response.]  
 The CLERK. Mr. Landry.  
 [No response.]  
 The CLERK. Ms. Herrera Beutler.  
 Ms. HERRERA BEUTLER. No.  
 The CLERK. Ms. Herrera Beutler votes no.

Mr. West.  
 Mr. WEST. No.  
 The CLERK. Mr. West votes no.  
 Mrs. Ellmers.  
 Ms. ELLMERS. No.  
 The CLERK. Mrs. Ellmers votes no.  
 Mr. Walsh.  
 Mr. WALSH. No.  
 The CLERK. Mr. Walsh votes no.  
 Mr. Barletta.  
 Mr. BARLETTA. No.  
 The CLERK. Mr. Barletta votes no.  
 Mr. Hanna.  
 Mr. HANNA. No.  
 The CLERK. Mr. Hanna votes no.  
 Mr. Schilling.  
 Mr. SCHILLING. No.  
 The CLERK. Mr. Schilling votes no.  
 Ranking Member Velázquez.  
 Ms. VELÁZQUEZ. Aye.  
 The CLERK. Ranking Member Velázquez votes aye.  
 Mr. Schrader.  
 Mr. SCHRADER. Aye.  
 The CLERK. Mr. Schrader votes aye.  
 Mr. Critz.  
 Mr. CRITZ. Aye.  
 The CLERK. Mr. Critz votes aye.  
 Ms. Clarke.  
 Ms. CLARKE. Aye.  
 The CLERK. Ms. Clarke votes aye.  
 Ms. Chu.  
 Ms. CHU. Aye.  
 The CLERK. Ms. Chu votes aye.  
 Mr. Cicilline.  
 Mr. CICILLINE. Aye.  
 The CLERK. Mr. Cicilline votes aye.  
 Mr. Richmond.  
 [No response.]  
 The CLERK. Mr. Richmond.  
 [No response.]  
 The CLERK. Ms. Hahn.  
 Ms. HAHN. Aye.  
 The CLERK. Ms. Hahn votes aye.  
 Mr. Peters.  
 Mr. PETERS. Aye.  
 The CLERK. Mr. Peters votes aye.  
 Mr. Owens.  
 Mr. OWENS. Aye.  
 The CLERK. Mr. Owens votes aye.  
 Mr. Keating.  
 Mr. KEATING. Yes.  
 The CLERK. Mr. Keating votes aye.  
 Chairman GRAVES. Any Member wish to change their vote?  
 Seeing none——

Ms. VELÁZQUEZ. Mr. Chairman, as a point of clarification, by voting on Ms. Hahn's amendment we are voting on an amendment that was voted on Cicilline, and so the vote on this amendment, what it does it makes sure that Mr. Cicilline's amendment takes precedent over Ms. Hahn's amendment, is it not?

Chairman GRAVES. No, Ms. Hahn's amendment has been amended.

Ms. VELÁZQUEZ. Yeah. So, in fact, they are voting on the language of Mr. Cicilline.

Chairman GRAVES. Well, they are voting on the language of Ms. Hahn. It has been amended by Mr. Cicilline.

Clerk, please report the——

The CLERK. Twelve ayes, 11 noes.

Chairman GRAVES. What was it?

The CLERK. Twelve ayes, 11 noes.

Chairman GRAVES. On this vote the ayes are 12, the noes are 11. The amendment is agreed to.

With that, the question is on H.R. 4206 as amended. All those in favor say aye.

[A chorus of ayes.]

Chairman GRAVES. All opposed no.

[A chorus of noes.]

Chairman GRAVES. In the opinion of the chair, the ayes have it. H.R. 4206 is agreed to without objection. A quorum being present, the bill is favorably reported to the House without objection. Without objection the Committee staff is authorized to correct punctuation and make other necessary technical corrections and conforming changes.

With that, that is the five bills. Thanks for everybody being here. The markup is adjourned.

[Whereupon, at 11:16 a.m., the Committee was adjourned.]